

No. 15987 ✓

United States
Court of Appeals
for the Ninth Circuit

ELMER J. FAUL and SYBELL E. FAUL,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif. 94103-58

FILED

JUN - 4 1958

PAUL P. O'BRIEN, CLERK

No. 15987

United States
Court of Appeals
for the Ninth Circuit

ELMER J. FAUL and SYBELL E. FAUL,
Petitioners,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	16
Appearances	1
Certificate of Clerk.....	108
Decision	33
Exhibits, Petitioner's:	
No. 3—Letter, Dated September 10, 1951..	92
4—Letter, Dated November 9, 1951...	94
Exhibit, Petitioner-Respondent:	
No. 1-A—Claim for Reward Under Treas- ury Decision No. 5379.....	56
Exhibits, Respondent's:	
C—Letter, Dated April 13, 1951.....	86
D—Letter, Dated September 4, 1951.....	88
E—Letter, Dated March 27, 1951.....	90
Findings of Fact and Opinion.....	23
Notice of Filing Petition for Review.....	107
Notice of Setting Proceeding for Trial.....	19
Petition	3
Ex. A—Notice of Deficiency.....	11

The Tax Court of the United States

Docket No. 56541

ELMER J. FAUL and SYBELL E. FAUL,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioners hereby petition for the redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated December 6, 1954 (Symbols: Ap:SF:AA:SMS 90-D:RCS), and to show the jurisdiction of this Court and as the basis for this proceeding, allege as follows:

1. The petitioners are individuals, husband and wife, residing in Carmel, Monterey County, California; their address is P. O. Box 248. Petitioners' joint income tax return for the year 1952 was filed with, and the tax liability disclosed thereon was paid to, the Collector of Internal Revenue, San Francisco, California.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to petitioners on December 6, 1954.

3. The deficiency determined by respondent is in income tax for the calendar year ended December 31, 1952, in the amount of \$18,350.23.

4. The determination of the tax set forth in said Notice of Deficiency (Exhibit "A") is based upon the following errors:

(a) Respondent erred in holding that the reported income in the amount of \$68,837.96 received by petitioner husband as compensation for personal services rendered during a period of sixty-seven (67) months commencing in February, 1944, and ending in September, 1949, may not be prorated over said 67-month period in the computation of petitioners' tax liability for the year ended December 31, 1952.

(b) Respondent erred in holding that the above amount of \$68,837.96 is includable in full in gross income for the year ended December 31, 1952, in accordance with Section 22(a) of the Internal Revenue Code.

(c) Respondent erred in holding that said \$68,837.96 was not compensation for personal services covering a period of thirty-six (36) calendar months or more within the meaning of Section 107(a) of the Internal Revenue Code.

5. The facts upon which petitioners rely as a basis for this proceeding, and to sustain the above assignments of error, are as follows:

(a) Petitioner husband was a full-time employee of the R. E. Myers Co. of Salinas, Monterey County, California, from February, 1941, to March, 1946, in the position of Office Manager. The R. E. Myers Co. was, at a time pertinent hereto, a subsidiary of the

Salinas Valley Ice Co. (also referred to as the Salinas Valley Ice Co., Ltd.) of Salinas, Monterey County, California. Petitioner husband was not at any time during his employment in charge of the tax records, preparation of tax returns, nor had he authority in establishing policies to be followed in filing the tax returns for the two above-named companies or either of them. The tax records and the tax returns were prepared for the above-named companies by one Emmett Gottenberg (now deceased) a Certified Public Accountant of San Jose, California. Said Gottenberg made several examinations each year of the books of the above-named companies, and at the end of each taxable year he prepared the tax returns for the two companies. Petitioner husband, at different times, did call said Gottenberg's attention to certain items which were being charged off on the tax returns of said companies as expense, but which he believed to be improper charges; that is, the expenses appeared to him to be the personal expenses of one R. E. Myers (now deceased), one of the owners of said companies. Said Gottenberg disregarded the suggestions so made to him by petitioner husband, and petitioner husband therefore began in February, 1944, to accumulate information and data and documents pertaining to the improper charge-offs, and he compiled, after office hours, a file thereof, which file, by the early part of 1947, showed a very considerable amount representing improper charge-offs by the two companies mentioned. On February 22, 1947, he reported in person to one John J. Boland, Assistant

Chief Field Deputy in respondent's San Francisco office, concerning the tax evasion and fraud perpetrated by either or both of the two above-mentioned companies, and he supported his report with data from the records compiled by him, which records were examined by said Boland. Subsequently, one Jack O'Connell, an agent for respondent, together with other agents visited petitioner husband in his at-that-time home, on 217 Pajaro Street, Salinas, Monterey County, California. Petitioner husband supplied to said agents all information theretofore given by him to said Boland and gave to them additional data in answering a great many questions directed to him by said agents concerning the matter of tax evasion of said two companies. He was visited thereafter by respondent's various agents for the purpose of obtaining additional information, which petitioner husband readily supplied to them. He also visited respondent's office in San Francisco a great many times during the years 1947 through 1950, during which time the data and supporting records supplied by him were checked by respondent's agents.

Petitioners filed a formal claim for reward for information on February 22, 1947, which claim was assigned No. 8990 for record purposes. Respondent's agents continued the checking of the records supplied by petitioner husband, and pertaining to the tax matter of the two above-mentioned companies, at least until April 14, 1950, when petitioner husband was informed by respondent's Washington

office that his claim No. 8990 was not ready for action because a report was awaited from the Field Office to determine if action had been completed on information supplied by him. Petitioner husband continued to answer inquiries and supply additional information to respondent's agents, and he kept himself available as a witness in a possible criminal prosecution until February 18, 1952, on which date he was informed by respondent's Washington office that his claim No. 8990 was allowed by the Assistant Commissioner of Internal Revenue in the sum of \$68,837.96.

“The amount of this allowance is based upon net additional income taxes collected from the taxpayer involved [i.e. Salinas Valley Ice Co., Ltd. and R. E. Myers, deceased] as a result of the information furnished by * * *” petitioner husband.

Subsequently, on March 21, 1952, pursuant to a notice of settlement of claim issued from the General Accounting Office (Certificate No. 2021588, Claim No. Z-962662), it was certified that the sum of \$68,837.96 was due petitioner husband from the United States:

“* * * on account of reward as informer in the case of Salinas Valley Ice Co., Ltd. and R. E. Myers, deceased, First District of California, as approved by the Assistant Commissioner of Internal Revenue (Bu. of Int. Rev., Claim No. 8990).”

Said notice also indicated that said sum so due to petitioner husband was payable from appropriation

“2020902.3, Salaries and Expense, Bureau of Internal Revenue, 1952.”

Thereafter, in April, 1952, petitioner husband received from the Comptroller General of the United States, a Treasury Check in the amount of \$68,837.96, in settlement of said claim.

(b) Petitioners filed their joint tax return for the calendar year 1952 in which they included in their gross income the said sum of \$68,837.96 as received from the Budget and Finance Division of the Bureau of Internal Revenue, Washington 25, D. C., together with Form 1099 supplied by said Division showing that said sum was received by petitioner husband for “salaries, fees, commissions, or other compensation.” Attached to the said return was a statement setting forth that:

“In April of 1952, Mr. Elmer J. Faul [petitioner husband] received \$68,837.96, the entire compensation for performance of personal service, covering a period of 67 months, commencing services in February, 1944, to completion of services in September, 1949. The taxpayer reports income on the cash basis. Separate returns on a community basis with wife, Sybell E. Faul [petitioner wife] have been filed for years 1944 to 1947, incl.—joint returns have been filed for the years 1948 to present. The attached Exhibit A and supporting schedules present an allocation of income to years of services rendered in accordance with Sec. 107(a) of the Internal Revenue Code.”

Said Exhibit "A" showing allocation of Sec. 107 "Income," showed that each of the petitioners received in the year 1944 11/67th of the said amount of \$68,837.96, or \$5,650.87 each; and that for the years of 1945 to 1948, inclusive, they received 12/67th for each year, or \$6,164.60 each; for the year 1949 each of the petitioners received 8/67th of said amount of \$4,109.73 each for a total received by petitioner husband of \$34,419.00 and by petitioner wife of \$34,418.96 (corrected as to pennies).

On the basis of the above allocation and as shown in Schedule 5 attached to said joint income tax return of petitioners, \$17,065.78 was payable by petitioners on said \$68,837.96, Sec. 107 "Income." This tax so calculated and due from petitioners was paid by them to respondent together with taxes due on other income received by them during the year 1952.

(c) Although petitioner husband performed services for and held himself available to respondent in connection with supplying information with reference to the tax matters of the two above-mentioned companies from February, 1944 until 1950 and required additional effort until February, 1952 to obtain payment of his claim, since the bulk of work on petitioner husband's part was completed by September, 1949, therefore petitioners allocated said income under Sec. 107(a) of the Internal Revenue Code to cover a period of 67 months, from February, 1944 to September, 1949.

(d) Respondent's agent, examining petitioners' 1952 income tax return, advised them that after con-

sulting with his supervisor, he could find no precedent for application of Sec. 107 to this type of compensation, and therefore respondent held that the benefits of Sec. 107 of the Internal Revenue Code are denied in computation of the tax liability of petitioners with reference to the lump sum of \$68,837.96 received by them in the year 1952 for services rendered as set forth above and over the period of years indicated. The examining agent computed petitioners' tax liability based upon Sec. 11 and Sec. 12 of the Internal Revenue Code, disclosing a deficiency of \$18,350.23.

(e) Petitioners filed their protest to such holding and finding on September 20, 1952, with the District Director of Internal Revenue, Audit Division, San Francisco 2, California, setting forth the facts and claiming on the basis thereof and on the basis of pertinent law that Sec. 107 of the Internal Revenue Code permits the application thereof to the computation of the tax liability on said lump sum award of \$68,837.96.

(f) Respondent determined that said sum received by petitioner husband as compensation for personal services was not compensation for personal services covering a period of 36 months or more within the meaning of Section 107(a) of the Internal Revenue Code, and further determined that the said amount of \$68,837.96 is includable in full in gross income for the year ended December 31, 1952, in accordance with Sec. 22(a) of the Internal Revenue Code; and without the interposition of this Court, the total tax liability from such erroneous

determination by respondent would be assessed against petitioners and collection thereof demanded from or enforced against them. Such determination by respondent is on its face erroneous and void.

Wherefore, petitioners pray that this Court may hear this proceeding and determine the correct income tax liability for the calendar year 1952.

FRANCIS HEISLER,
PEARL BAER,
Counsel for Petitioners.

Duly verified.

Copy

Form 1230 (App.)

EXHIBIT "A"

U.S. Treasury Department
Internal Revenue Service
Regional Commissioner
Appellate Division—San Francisco Region
Room 1010—870 Market Street
San Francisco 2, California

December 6, 1954

In Replying Refer to
Ap:SF:AA:SMS
90-D:RCS

Mr. Elmer J. Faul and
Mrs. Sybell E. Faul
P.O. Box 248
Carmel, California

Dear Mr. and Mrs. Faul:

You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1952, discloses a deficiency or deficiencies of \$18,350.23 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D.C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, Room 1010, 870 Market St., San Francisco 2. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt

of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner;

By /s/ WM. G. WILKER,
Special Assistant,
Appellate Division.

Enclosures:

Statement

Form 1276

Agreement Form

Statement

Ap:SF:AA:SMS

90-D:RCS

Elmer J. Faul and

Sybell E. Faul

P.O. Box 248

Carmel, California

Tax Liability for the Taxable Year Ended December 31, 1952.

Year	Deficiency
1952	Income Tax \$18,350.23

In making this determination of your income tax liability, careful consideration has been given to your protest dated September 20, 1954, and to the statements made at the conferences held on October 29 and November 15, 1954.

A copy of this letter and statement has been mailed to our representative, Mathew M. Maguire, Room 303, Professional Building, 215 Franklin Street, Monterey, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Income

Year: 1952

Net income as disclosed by return.....	\$70,243.66
Net income as adjusted.....	\$70,243.66

Explanation of Adjustments

In your return for the year ended December 31, 1952, you reported income in the amount of \$68,837.96 as compensation for personal services covering a period of 67 months, commencing in February, 1944, and ending in September, 1949, and prorated the income over the 67 month period in the computation of your tax liability for the year ended December 31, 1952.

It is held that the amount shown above is includable in full in gross income for the year ended December 31, 1952, in accordance with Section 22(a) of the Internal Revenue Code and that such income was not compensation for personal services covering a period of thirty-six calendar months or more within the meaning of Section 107(a) of the Internal Revenue Code.

Computation of Income Tax—Individual

Year: 1952

Net adjusted income	\$70,243.66
Exemptions: 2 @ 600.00 each.....	1,200.00
	<hr/>
Income subject to tax	\$69,043.66
One-half of taxable income (If joint return)	\$34,521.83
Income tax	\$17,730.84
Income tax (Double the above— if joint return)	\$35,461.68

Self-employment tax (from return or as corrected)	38.57
<hr/>	
Total tax liability	\$35,500.25
Income tax liability disclosed by origi- nal return, A/C #AR 700303, 1st Calif. District	17,150.02
<hr/>	
Deficiency in income tax	\$18,350.23

Served March 1, 1955.

Received and filed February 28, 1955, T.C.U.S.

[Title of Tax Court and Cause.]

REQUEST FOR DESIGNATION OF
PLACE OF HEARING

Comes now Elmer J. Faul and Sybell E. Faul,
by their attorneys, Francis Heisler and Pearl Baer,
and in accordance with Rule 26 of the Rules of
Practice Before the Tax Court of the United
States,

Requests that the Court designate that the hear-
ing in the above-entitled proceeding be held at San
Francisco, California, or vicinity, in order to afford
the respective parties an opportunity to produce
evidence at the trial with a minimum expense.

/s/ FRANCIS HEISLER,

/s/ PEARL BAER,

Attorneys for Petitioners.

Received and Filed February 28, 1955, T.C.U.S.

Granted March 4, 1955.

Served March 7, 1955.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, R. P. Hertzog, Acting Chief Counsel, Internal Revenue Service, and for answer to the petition filed by the above-named petitioners, admits and denies as follows:

1. Admits that the petitioners are individuals, husband and wife, residing in Carmel, Monterey County, California; admits that their address is P.O. Box 248; admits that petitioners' joint income tax return for the year 1952 was filed with the Collector of Internal Revenue, San Francisco, California; denies the remaining allegations contained in paragraph 1 of the petition.

2. and 3. Admits the allegations contained in paragraphs 2 and 3.

4. Denies the allegations of error contained in paragraph 4 and in each and every subparagraph thereunder.

5. (a). Admits that petitioner husband was a full-time employee of the R. E. Myers Company of Salinas, Monterey County, California, from February, 1941 to March, 1946, in the position of Office Manager; admits that the R. E. Myers Company was, at a time pertinent hereto, a subsidiary of the Salinas Valley Ice Company of Salinas, Monterey County, California; admits that petitioner husband

received a Treasury Check in the amount of \$68,837.96; denies the remaining allegations in subparagraph (a) of paragraph 5.

5. (b). Admits that petitioners filed their joint tax return for the calendar year 1952, in which they included in their gross income the said sum of \$68,837.96; admits that attached to the said return was a statement; denies the remaining allegations in subparagraph (b) of paragraph 5.

(c). For lack of information, denies the allegations in subparagraph (c) of paragraph 5.

(d). Admits that respondent held that the benefits of Sec. 107 of the Internal Revenue Code are denied in computation of the tax liability of petitioners with reference to the lump sum of \$68,837.96 received by them in the year 1952; denies the remaining allegations in subparagraph (d) of paragraph 5.

(e). Admits the allegations in subparagraph (e) of paragraph 5 of the petition, except denies that the protest was filed on September 20, 1952.

(f). Admits that respondent determined that said sum received by petitioner husband as compensation for personal services was not compensation for personal services covering a period of 36 months or more within the meaning of Section 107(a) of the Internal Revenue Code, and further determined that the said amount of \$68,837.96 is includable in full in gross income for the year ended December 31, 1952, in accordance with Sec. 22(a) of

the Internal Revenue Code; denies the remaining allegations in subparagraph (f) of paragraph 5.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination in all respects be approved and the petitioners' appeal denied.

/s/ R. P. HERTZOG,
Acting Chief Counsel,
Internal Revenue Service.

Filed April 19, 1955, T.C.U.S.

Tax Court of the United States
Washington

Docket No. 56541

April 10, 1957

ELMER J. FAUL, Et Al.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Trial on: June 17, 1957

Trial at: Customs Courtroom
U.S. Appraisers Bldg.
630 Sansome Street
San Francisco, Calif.

To: Francis Heisler, Esq.
P.O. Box 3426
Carmel, California

NOTICE OF SETTING PROCEEDING
FOR TRIAL

Take Notice that the above-entitled proceeding is included on a calendar of cases set for trial before a Division of the Tax Court of the United States as indicated above.

That calendar will be called at 10.00 a.m. on the date indicated above and you will be expected to answer the call at that time and be prepared for trial when the above-entitled proceeding is reached. Continuance will be granted only for extraordinary cause. Failure to appear will be taken as cause for dismissal in accordance with Rule 27(b)(3) of the Court's Rules of Practice.

You are expected to be familiar with the Court's Rules of Practice in all other respects.

Your attention is called particularly to Rule 31(b) which requires that the parties stipulate facts and evidence to the fullest possible extent prior to the call of the calendar. You should confer with your adversary promptly in order to comply with that rule.

Respectfully,

/s/ HOWARD P. LOCKE,
Clerk.

Served: April 10, 1957.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is stipulated by and between the parties hereto, by their respective counsel, that the following facts shall be taken to be true in the above-entitled case and received as evidence therein, subject to the right of either party to offer such further and additional evidence not inconsistent with or contrary to the matter herein stipulated:

1. The petitioners are formerly husband and wife who were divorced after the filing of the petition in this case; that the interlocutory decree of divorce was entered in the Superior Court of the State of California in and for the County of San Francisco in Cause No. 449942 and entitled Elmer J. Faul, Plaintiff v. Sybell E. Paul, Defendant. Said decree was filed on the 29th day of December, 1955; a final decree of divorce was entered subsequently; and that petitioner Sybell E. Faul resides in Carmel, Monterey County, California, and that the other petitioner Elmer J. Faul resides in San Francisco, California.

2. Petitioners filed their joint income tax return for the year 1952 with the District Director of Internal Revenue, San Francisco, California.

3. Petitioner Elmer J. Faul was a full time employee of the R. E. Myers Company of Salinas, Monterey County, California, from approximately February, 1941, to March, 1946. The R. E. Myers

Company was a subsidiary of the Salinas Valley Ice Co. (also known as Salinas Ice Co., Ltd.) of Salinas, Monterey County, California.

The tax records were kept and the tax returns for the above-named companies were prepared by one Emmett Gottenberg, a certified public accountant of San Jose, California.

4. On February 22, 1947, petitioner Elmer J. Faul had an interview in San Francisco with John Boland, Chief Field Deputy in the office of the Collector of Internal Revenue, San Francisco, California. At that time petitioner Elmer J. Faul submitted to Boland a memorandum of alleged violations of Internal Revenue laws by the Salinas Valley Ice Company.

5. On the same day, February 22, 1947, Elmer J. Faul filed Form 211 as Claim No. 8990.

6. Beginning with the month of March, 1947, petitioner Elmer J. Faul was interviewed by Agent Allan Shurlock and other agents to whom he gave the above-mentioned memoranda.

7. Petitioner Elmer J. Faul subsequently supplied additional information and answered queries directed to him pertaining to the above companies by Revenue Agent Shurlock.

8. Petitioner Elmer J. Faul also corresponded in writing with officials of the Internal Revenue Service and the Treasury Department.

9. In April, 1952, petitioner Elmer J. Faul received a check in the amount of \$68,837.96 as informer's award.

10. The Collection Office of the Internal Revenue Service in Salinas, California, demanded an estimated tax return and the payment of estimated tax with respect to the receipt by petitioner Elmer J. Faul of the award of \$68,837.96. Payment of tax pursuant to such estimated tax return was made by petitioners in the amount of \$25,825.82.

Thereafter petitioners filed their income tax return for the year 1952 and in connection with the payment of said \$68,837.96 they claimed the benefit of Section 107 Internal Revenue Code of 1939. Accordingly, the return indicated a tax liability of \$17,150.02 and an overpayment of \$8,825.46, which overpayment was refunded by the Internal Revenue Service to petitioners.

11. Thereupon, respondent determined that said sum of \$68,837.96 received by petitioner Elmer J. Faul "was not compensation for personal services covering a period of thirty-six (36) calendar months or more within the meaning of Section 107(a) of the Internal Revenue Code * * *" and further determined that "the said amount of \$68,837.96 is includable in full in gross income for the year ended December 31, 1952, in accordance with Section 22(a) of the Internal Revenue Code * * *" The examining agent computed petitioners' tax liability based upon Section 11 and Section 12 of the Internal Revenue

Code on the basis of which a deficiency of \$18,350.23 was claimed.

/s/ FRANCIS HEISLER,
Counsel for Petitioners.

/s/ NELSON P. ROSE,
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

Filed at Trial June 24, 1957 T.C.U.S.

29 T. C. No. 49

Tax Court of the United States

Docket No. 56541

ELMER J. FAUL and SYBELL E. FAUL,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

FINDINGS OF FACT AND OPINION

An informer's award of \$68,837.96 did not qualify for treatment under Section 107(a), Internal Revenue Code of 1939, since services leading to award did not extend over a 36-month period.

Francis Heisler, Esq., for the petitioners.

Edward H. Boyle, Esq., for the respondent.

Respondent determined a deficiency of \$18,350.23 in petitioners' joint return for the taxable year 1952.

The only question presented is whether an informer's award received by petitioner Elmer J. Faul qualifies for treatment under Section 107(a), Internal Revenue Code of 1939.

Findings of Fact

Some of the facts were stipulated and are incorporated herein by this reference.

Petitioners, Elmer J. Faul and Sybell E. Faul, formerly husband and wife, were divorced after the filing of the petition in this case. Elmer J. Faul (hereinafter sometimes referred to as Faul) now resides in San Francisco, California. Sybell E. Faul (hereinafter sometimes referred to as Sybell) resides in Carmel, California. Petitioners filed their joint income tax return for the year 1952 with the district director of internal revenue, San Francisco, California.

From approximately February 1941 to March 1946 Faul was employed full time as office manager by the R. E. Myers Company, of Salinas, Monterey County, California. The R. E. Myers Company was a subsidiary of the Salinas Valley Ice Company (also known as Salinas Ice Company, Ltd.), of Salinas, Monterey County, California.

Following 1942 Faul asked his employer, Ralph Myers, why he was cheating with his books and exposing himself to a charge of fraud. Faul further stated that he did not wish to remain with Myers and continue to be exposed to such conduct. Myers regarded the objections lightly and assured Faul that he would "have someone else do it." At that time he hired Emmett Gottenburg, a certified public accountant. Gottenburg kept the tax records and prepared the tax returns for the above-named companies.

In 1944 Faul went to San Francisco to talk to "some Government man" about what he should do to protect himself. He was told that he should make records and have evidence so that he would not be exposed.

In order to shield himself, Faul, working in his home and in the office late at night, commenced to compile records in February or March of 1944. He continued with this record making for the remainder of 1944 and during 1945 and part of 1946.

Faul was discharged by the Myers Company in March 1946. Thereafter he determined to submit evidence of the alleged fraud to the Government, and on February 22, 1947, he had an interview in San Francisco with John Boland, Chief Field Deputy in the office of the collector of internal revenue, San Francisco, California. At that time he submitted to Boland a memorandum of 45 alleged violations of internal revenue laws by the Salinas Valley Ice Company. On the same day Faul filed

a claim for reward on a form 211. Additional information supplied by Faul between April and July of 1947 increased the allegations to a total of about 68 or 70.

Alan Russell Shurlock (hereinafter referred to as **Shurlock**), an internal revenue agent, commenced an audit of the Salinas Valley Ice Company in May 1947. He was in contact with Faul concerning the list of allegations during the summer and fall of 1947. The last discussion between Shurlock and Faul for the purpose of enabling Shurlock to understand the allegations took place in September, October and November 1947. He submitted his final report on the Salinas Valley Ice Company in July 1948. The case was then forwarded to the conference section in San Francisco. Shurlock discussed the case with the conferee a number of times. To the best of Shurlock's knowledge, Faul never met nor had a conference with the conferee.

Shurlock, requested by his superiors to assess the value of the information furnished by Faul, reported that "the information furnished by the informer was of good value in the investigation." In so doing he had in mind only the 68 allegations. He never received from Faul any documentary evidence, further studies, or copies of other documents made by him of the books and records of the Salinas Valley Ice Company or the R. E. Meyers Company.

Shurlock saw Faul during 1948 and 1949, usually at Faul's home. Mrs. Shurlock sometimes accom-

panied him. When Mrs. Shurlock came they did not all sit together; she played the piano and Shurlock stayed with Faul, not always in the same room.

Conversations between Faul and Shurlock were limited to the Government case. The general tenor of these conversations was "When am I going to get my reward?" Often they would reminisce about some of the issues involved in which Faul had furnished information, and go over the points that had been brought out. On these occasions, Faul furnished Shurlock no additional information in connection with the case.

Shurlock visited Faul at least once during 1950 and 1951. Sybell was present during such a visit when a conversation concerning the fraud penalties against the Myers Company took place. She could not recall whether Shurlock at that time asked Faul to supply any additional information.

In May 1950 Boland called Faul to San Francisco. Sybell accompanied Faul to Boland's apartment. When asked on direct examination if Boland requested any additional information from Faul, Sybell replied: "Well, yes; my husband went into the kitchen * * * and really nothing much took place, because they were talking in the kitchen for a short time and then they came out and we left." Sybell and Faul never saw Boland except in connection with the case.

During 1950 and 1951 Faul corresponded with officials of the Bureau of Internal Revenue and the

Treasury Department concerning his claim for reward. In one such letter Faul stated: "Mr. O'Connell as his local representative Alan Shurlock conferred with me numerous times during first 2 years after I reported this case for information" [sic].

On September 10, 1951, William W. Parsons, Administrative Assistant Secretary of the Treasury Department, wrote Faul informing him that "it has been found necessary to request additional information from the field office in California and your case can not be concluded until that information is received at headquarters."

In April 1952 Faul received a check in the amount of \$68,837.96 as an informer's award. The award was paid from the appropriation for salaries and expenses, Bureau of Internal Revenue.

The collection office of the Bureau of Internal Revenue demanded an estimated tax return and payment of estimated tax with respect to the \$68,837.96. Payment of tax pursuant to such estimated tax return was made by the petitioners in the amount of \$25,825.82.

Thereafter petitioners filed their income tax return for the year 1952, and, in connection with the payment of the award, claimed the benefit of section 107, Internal Revenue Code of 1939. Accordingly, the return indicated a tax liability of \$17,150.02 and an overpayment of \$8,825.46. This overpayment was refunded by the Bureau of Internal Revenue. Thereafter respondent determined that

the award received by Faul "was not compensation for personal services covering a period of thirty-six (36) calendar months or more within the meaning of section 107(a) of the Internal Revenue Code," and further determined that the award was includible in full in gross income for the year ended December 31, 1952, in accordance with section 22(a) of the Internal Revenue Code. The examining agent computed petitioners' tax liability based upon section 11 and section 12 of the Internal Revenue Code. On the basis of this computation a deficiency of \$18,350.23 was determined.

Opinion

Van Fossan, Judge: The sole question presented here is whether an informer's award received by petitioner Elmer J. Faul may be allocated ratably over a period of three years or more as compensation for personal services under the provisions of section 107(a), Internal Revenue Code of 1939.¹

¹Sec. 107. Compensation for Services Rendered for a Period of Thirty-Six Months or More and Back Pay.

(a) Personal Services.—If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

For section 107(a) to apply, at least 80 per cent of the total compensation must be received or accrued in one taxable year, the compensation must be for personal services, and the services must cover a period of 36 calendar months or more. The respondent concedes that the first requirement has been met but contends that the two remaining contingencies have not been satisfied.

A taxpayer who claims the benefit of section 107 must show that he comes squarely within the letter and spirit of the Congressional grant. *Van Hook v. United States*, 204 F. 2d 25 (1953), certiorari denied 346 U. S. 825. We are not persuaded that petitioners have sustained this burden.

Petitioners urge that Faul began performing services for the Bureau of Internal Revenue in 1944.

The record shows that following 1942 Faul became alarmed about the tax practices of his employer. In 1944 he went to San Francisco to talk to "some Government man" for the purpose of determining what he might do to shield himself against possible future charges. Upon his return home Faul followed advice received in San Francisco and commenced to compile records so he would have evidence to protect himself. He continued to make records during 1944, 1945, and 1946. In 1946 Faul was discharged by his employer, and in February, 1947, he submitted a memorandum of alleged violations of internal revenue laws to the office of the collector of internal revenue in San Francisco.

There is no evidence either as to the identity of the "Government man" contacted by Faul in 1944 or that they conferred on any subject other than how Faul might protect himself. The record does not show that Faul identified his employer at this conference.

We conclude that petitioners have not shown Faul to have rendered any service to the Bureau of Internal Revenue before February 22, 1947. *Barker v. Shaughnessy*, an unreported case (N. D., N. Y., 1954; 48 A.F.T.R. 1301, 55-1 U.S.T.C., par. 9116).

Petitioners argue that even if Faul did not begin to furnish information until February, 1947, nonetheless the statutory period of 36 months may be satisfied. To achieve this they must show that Faul's services continued until February, 1950.

The record establishes that Faul supplied no information subsequent to the fall of 1947. Shurlock, the agent conferring with Faul, filed his report in July, 1948. The case then went to conference. There is nothing to indicate that Faul ever met or had a conference with the conferee. The case was closed in 1950.

Shurlock visited Faul from time to time throughout 1948 and 1949; doubtless they discussed the case at great length. However, their discussion was limited to reminiscence and to when Faul would receive the reward.

Sybell, Faul's wife, was present when a conversation took place between Faul and Shurlock in 1950

or 1951, but could not recall whether Shurlock asked for additional information.

In May, 1951, petitioners paid a visit to John Boland, an official in the collector's office at San Francisco. Sybell testified that Boland requested additional information. However, no evidence was submitted as to what was said, or that Sybell could even hear the conversation, other than that petitioners never saw Boland except in connection with the case. The discussion might well have concerned solely the reward petitioners were striving for. The record does not establish that Faul furnished any such additional information.

On September 10, 1951, William W. Parsons, Administrative Assistant Secretary, Treasury Department, wrote Faul informing him that it had been necessary to request additional information from the field office in California and that Faul's case could not be concluded until that information was received at headquarters. There is no evidence that Faul supplied any of this additional information or that, indeed, Parsons expected to obtain such information from any source other than the field office itself.

Herbert Stein, 14 T.C. 494 (1950), cited by petitioners, does not support their case. They cite only dicta in *Smart v. Commissioner*, 152 F. 2d 333 (1945). Other cases relied upon by petitioners may be distinguished on their facts.

Petitioners have not established that Faul performed services for the Bureau of Internal Revenue

over a 36-month period and hence may not claim the benefit of section 107(a).

Decision will be entered for the respondent.

Served December 12, 1957.

Filed December 12, 1957.

Entered December 12, 1957.

The Tax Court of the United States

Washington

Docket No. 56541

ELMER J. FAUL and SYBELL E. FAUL,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed December 12, 1957, it is

Ordered and Decided: That there is a deficiency in income tax of \$18,350.23 for the taxable year 1952.

/s/ ERNEST H. VAN FOSSAN,
Judge.

Served December 16, 1957.

Entered December 16, 1957.

The Tax Court of the United States

Docket No. 56541

In the Matter of:

ELMER J. FAUL, et al.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

TRANSCRIPT OF PROCEEDINGS

421 U. S. Appraisers Building,
630 Sansome Street,
San Francisco 11, California.

Monday, June 24, 1956.

The above-entitled matter came on for hearing,
pursuant to Calendar Call, at 10:10 o'clock a.m.

Before: The Honorable Ernest H. Van Fossan.

Appearances:

FRANCIS HEISLER,

Post Office Box 3996,

Carmel, California,

On Behalf of the Petitioners.

EDWARD H. BOYLE,

For the Respondent.

The Clerk: Docket 56541, Elmer J. Faul, et al.
Proceed Gentlemen.

Mr. Heisler: Francis Heisler for the Petitioners.

Mr. Boyle: Edward H. Boyle for the Respondent.

Mr. Heisler: May I make a short statement, your Honor, about the nature of the case?

The Court: You may state what the issues are.

Mr. Heisler: One of the Petitioners, Elmer J. Faul, was employed from about 1941 until March 1, 1946, as a bureau chief by the R. E. Myers Co. in Salinas, California. This company was a subsidiary of the Salinas Ice Company, which was also known as Salinas Ice Company, Limited. Shortly after he began working, as our evidence is going to disclose, he noticed that there were certain irregular entries made by the company which appeared to him were made for the purpose of evading taxes. In 1942 and 1943 and up to 1944, he spoke to his boss, who was Mr. Ralph Myers, that these entries were not proper and that the company will get in trouble unless a change be made. The employer informed him that he, Mr. Faul, has nothing to do with the books pertaining to the taxes, that that job is done by someone else, and that he should keep his nose out of their affairs. Mr. Faul informed his employer that since he, Faul, was pretty much in charge of the office, he will have to protect himself because it will be impossible [3*] for him to convince the Government that he was not a participant in crime in this affair. Mr. Myers informed him again that he should

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

not worry about this matter. However, he did worry about it and, therefore, as our evidence discloses, in 1944, he went to San Francisco and he talked to the Department of Internal Revenue. He stated that **there are, in his opinion, certain fraudulent entries made by the company and he doesn't want to have anything to do with the case, he wants to protect himself, and he asked what he is to do.** He was advised that he should keep the records, that he should make copies of documents, such documents as he considered fraudulent, and he was also told at that time that if the information that he is to supply should disclose delinquent taxes, he may receive a reward. However, at that time, as our evidence shows, the main problem Mr. Faul had before him is his question of participating in the fraud.

From 1944 to 1946, he repeatedly called upon his employer, who was also a friend of his, that he should stop making these improper charges because the company was making plenty of money, there was no need to try to make some more money by cheating the Government, but he was refused any proper answer. In fact, in February 1946, Mr. Ralph Myers, the employer, fired him from his job, and he told Mrs. Faul that he is very sorry that he had to fire him, but he was getting into the hair of the company and they had to eliminate [4] him from a place where he could have access to the records, and as of March 1, 1946, he had no more access to the books, though he had by that time accumulated a great deal of information. After he was fired, Mr.

Ralph Myers felt that he owed this man something and he gave half-partnership to his wife in Tassajara, which is a hotel up in Carmel Valley. Mrs. Faul was managing the place from April 1946 until late that year when Ralph Myers, the owner of the company, or one of the owners of the company, was killed in an accident. The father, Senior Myers, came down to the hotel and told the Fauls they would have to get out of the place. When they insisted they were given half-partnership in the place, which they were earning, the man threatened them with dire consequences. As a matter of fact, he insisted of Mr. Faul, if he did not give up the Tassajara, he was going to ruin him. Mr. Faul was very disturbed, in discussing this with his wife, was afraid that Mr. Myers would go to the Income Tax Department and that all the fraudulent entries would be disclosed as having been made by Mr. Faul. The two of them then decided they were going to turn over the records to the Income Tax Department, as Mr. Faul had been collecting them for years. Our evidence is going to disclose, Your Honor, that Mr. Faul made the copies after working hours, either at his home where he took the books, or in his office, but always after working hours.

In February, early in February 1947, in [5] accordance with an understanding between Mr. and Mrs. Faul, Mr. Faul wrote a letter to the Income Tax Department and stated that he had enough records to prove that the Myers Company was guilty of fraud. He was then asked to come to San

Francisco, where he talked to Mr. John Boland, who was the Chief Field Officer, if I remember correctly his title, and turned over to him a summary of the information that he had collected from 1944 on. At that time Mr. Boland suggested to him that he should fill out a Form 41, which he did. That is dated February 22nd.

Beginning with late February or early March 1947, Mr. Faul and Mrs. Faul were visited in their home in Salinas by numerous agents, among them Mr. Jack O'Connell—

The Court: Agents of what?

Mr. Heisler: He was an agent of the Income Tax Department, he was the agent in charge, or field agent.

The Court: Internal Revenue Agent?

Mr. Heisler: Internal Revenue Agent, yes.

Mr. O'Connell came down to talk to Mr. Faul, to determine whether or not this summary of information could be substantiated by Mr. Faul's own statement. After Mr. O'Connell obtained that information, he assigned some other agents, one of them being a Mr. Shurlock, and another was a Mr. Van Schroeder. These agents were coming to Mr. Faul's place during the years of '47, '48 and '49. During that time Mr. Faul was always willing, ready and able to supply additional [6] information, which information finally culminated in a deficiency assessment against the Myers Company in March 1950, according to which almost \$1 million additional taxes were recovered.

The testimony will show that the man in charge

of the conference on these deficient taxes of the Myers Company recommended a fraud penalty of about \$500,000.00. However, the agent, I believe it was Mr. Shurlock, recommended against the assessment of these fraud charges, and he came back, in accordance with the instructions received from Washington, to Mr. Faul to obtain additional information during the year of 1950 and in 1951. Mr. Shurlock and Mr. Faul had a great many discussions at Mr. Faul's home during which Mr. Faul was attempting to show that there was evidence to obtain these additional fraud penalties. However, the report was sent in finally and in consequence of such report no fraud penalty was assessed.

The Court: It is not necessary to go into such detail, Mr. Heisler.

Mr. Heisler: Early in 1952, Mr. Faul received from the Government the sum of 68 thousand and some-odd dollars as his reward. Immediately thereafter the Internal Revenue Department collected from him some 28 thousand dollars taxes and then he filed his 1952 joint return, claiming that his services were rendered over a period of 67 months and that in consequence he is entitled to the benefits of Section 107(a). [7] On preliminary investigation this claim was upheld and he received back about \$8,000.00.

Subsequently, however, the Government claimed that these services were not extending over 36 months or longer and assessed against him additional taxes of \$18,350.00.

We are contending that the taxpayers are entitled to the benefit of Section 107(a). That is our case, Your Honor.

The Court: Mr. Boyle?

Mr. Boyle: The first indication in the Government's files of Mr. Faul's activity was on February 22, 1947, at which time he came to San Francisco and discussed the case briefly with Mr. Boland, and he left with Mr. Boland a list of allegations of charges that the Salinas Valley Ice Company had not been paying their full tax. At that time he filled out a Form 211 for an informer's award. The case was assigned to a Revenue Agent in April of 1947, and he got in touch with Mr. Faul for further explanation of the list of allegations. He turned in his report in July of 1948. That was the termination of the Revenue Agent's investigation of the Salinas Valley Ice Company, the corporation on which Mr. Faul had informed.

The case then went to conference in San Francisco—I may say that the Salinas Valley Ice Company, Mr. Faul and Mr. Shurlock, the Revenue Agent, were all in the vicinity of either Salinas, Carmel or Monterey—the case came to San Francisco for conference and, although Mr. [8] Shurlock met with Mr. Faul on a number of occasions in Mr. Faul's home on a social plane, there was no further discussion of the case other than reminiscence and talk about how the officers of the corporation had defrauded the Government and so forth, but all the official work was over. The only thing that occurred after 1948, so far as Mr. Faul was concerned,

was that in 1950 he started writing many letters to the Internal Revenue Service inquiring about his reward, which finally came in about April of 1952. At that time he requested to be paid in several instalments covering several years, and he was told that could not be done, and he was paid in one lump sum of approximately \$68,000.00, which, on his return, he spread over a period from, under Section 107, from sometime in 1944 until sometime in 1949.

The Respondent takes the position that the full reward is income in the year received, 1952, on two grounds:

First, it was not compensation for personal services, that Mr. Faul was not an employee in any sense, he was not rendering services, but he actually sold information. There was no contract, no meeting of the minds, there could have been no forcing the reward if Mr. Faul had not received it, it was purely discretionary with the Commissioner, and therefore it was merely the payment for information.

Secondly, it is the position of the Respondent that, in any event, what Mr. Faul did did not cover the period of 36 [9] months or more.

The Court: You may proceed with the evidence.

Mr. Heisler: If Your Honor please, I would like to state for the record that I will have evidence on that score, that Mr. Faul is physically unable to be present, and I would like to call his son so that in a few words he can tell Your Honor why his father could not be present here, and then Mrs. Faul is going to take the witness stand to testify.

The Court: Very well.

Whereupon

GENE FAUL

was called as a witness on behalf of the Petitioners and having been first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Gene Faul.

Direct Examination

By Mr. Heisler:

Q. Where do you live, Mr. Faul?

A. In Carmel, California.

Q. You are the son of Elmer J. Faul and Sybelle E. Faul?

A. Yes, sir.

Q. You met your father recently?

A. I saw my father recently, I will say last year, I remember on one occasion. [10]

Q. Do you know his physical and mental condition?

A. Yes, sir. If I may elaborate. Going way back to 1945, my father suffered a nervous breakdown during my high school years, when I noted that he was extremely nervous, and by the time I had entered the University of Santa Clara he was more nervous than ever, and, as I say, last year, with his divorce from my mother, he came down to the Carmel dwelling that they shared and wanted certain belongings and was in a highly excitable state and just appeared so nervous that he was almost

(Testimony of Gene Faul.)

incoherent. I have received numerous letters since that time which clearly indicate to me that he is quite off on a tangent and is not—his nervousness just does not qualify him, I am sure, to testify in this case.

Q. Mr. Faul, at the time when he came down to the house, did you inform the police that you were worried about, that he may do something to your mother, that he is so excited, that he is so disturbed?

A. Yes. We discussed the matter with my mother and we thought that it was a necessary precaution that we do so.

Q. Do you know that in the divorce case your father filed against your mother in San Francisco an injunction was filed against him so that he could not bother your mother?

A. Yes, sir.

Mr. Heisler: That is all.

Mr. Boyle: No questions. [11]

The Court: You are excused.

(Witness excused.)

Mr. Heisler: Mrs. Faul.

Whereupon

SYBELLE E. FAUL

was called as a witness on behalf of the Petitioners and having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Sybelle E. Faul.

Direct Examination

By Mr. Heisler:

Q. Where do you live, Mrs. Faul?

A. Carmel, California.

Q. You are one of the Petitioners in the case, Docket No. 56541, Elmer J. Faul and Sybelle E. Faul versus the Commissioner of Internal Revenue?

A. Yes, sir.

Q. You are the wife, the former wife of Elmer J. Faul, is that right? A. Yes, sir.

Q. When were you married? A. In 1924.

Q. And you lived together as husband and wife until when? A. Thirty-one years. [12]

Q. And your son mentioned the divorce case. Did you file a divorce suit against him or did he file a suit against you?

A. He filed a suit against me.

Q. And the divorce decree was entered in December, 1955, is that correct? A. Yes, sir.

Q. Where is your husband living now, do you know? A. San Francisco.

(Testimony of Sybelle E. Faul.)

Q. When you saw him the last time, his condition was as your son described, is that correct?

A. Yes, sir.

Q. You don't believe that he would be able to take the witness stand and tell a coherent story?

A. No, sir.

Q. During the time here involved, namely, 1941, when your husband first went to work at R. E. Myers Co., you were living with him as his wife, is that right?

A. Yes, sir.

Q. Where were you living at the time when he got the job with the company?

A. Watsonville.

Q. Who was the employer, the immediate employer, of Mr. Faul?

A. Mr. Ralph Myers.

Q. In what capacity was Mr. Faul [13] employed by the company?

A. Office Manager.

Q. And for a while—By the way, where was he working as an Office Manager?

A. At the Ralph Myers Co.

Q. Where?

A. In Salinas.

Q. In consequence, from the beginning of his employment, he had to commute between Watsonville and Salinas, is that correct?

A. Yes, sir.

Q. Did you subsequently move to Salinas?

A. Yes. He demanded we move to Salinas because it was during the time—

Q. (Interrupting): Who did that, Mrs. Faul?

A. Mr. Myers. It was during the time we had war with the Japs and the lights were bad, the gasoline situation was very serious, and he insisted

(Testimony of Sybelle E. Faul.)

that he needed him for more time than he was giving him, that he would be working evenings and he would be working very long hours, and he should be in Salinas.

Q. So then you agreed to give up your home in Watsonville? A. And move to Salinas.

Q. And when was that, that you moved to Salinas? A. 1942. [14]

Q. Do you recall following 1942 any conversation between your husband and Ralph Myers concerning any tax irregularities?

A. Yes, I do, because Mr. Myers was in our home a great deal, he wasn't only his employee, we were friends at the time, and my home was very close to the place of business and he used to come in for lunch and he used to drop in late evenings when he felt he didn't want to drive to his ranch. And my husband asked him a couple of times at lunch time why he felt that he had to cheat with his books, because he made enough money without doing it, and it exposed him to fraud, and he didn't want to continue with him, being exposed to such conduct. But Ralph always passed it off lightly and said, "Well, you won't have to do it. I will have someone else do it." And at that time he hired another man to take it over.

Q. Do you know the name of the other man who was hired to do the tax work?

A. His name was—His name has left me.

Q. Was it Emmett Gothenburg?

A. Yes, Emmett Gothenburg, who has now passed away.

(Testimony of Sybelle E. Faul.)

Q. You said that you heard at least two conversations between your husband and Ralph Myers about these tax irregularities. When were those conversations, about?

A. They were in 1942, 1943.

Q. Do you recall any conversation concerning the same matter between your husband and this tax accountant, Mr. [15] Gothenburg?

A. Well, my husband asked Mr. Gothenburg why he did such things as he was doing, and he of course resented it, too, and——

Mr. Boyle: I object. There is no foundation laid for this particular conversation with Mr. Gothenburg.

Mr. Heisler: All right, I will ask some other questions.

By Mr. Heisler:

Q. Was Mr. Gothenburg hired by R. E. Myers Co.?

A. Yes, sir.

Q. What was his job, doing what?

A. To—Well——

Mr. Boyle: This has no probative value. I will stipulate that Mr. Gothenburg was an accountant for Salinas Valley Ice. The Myers Company was not a subsidiary, it was just a fictitious name for the farming operations of Salinas Valley Ice Company, but it can be used interchangeably or synonymously with the Salinas Valley Ice Company.

Mr. Heisler: All right.

By Mr. Heisler:

Q. Mrs. Faul, when in 1943 your husband again

(Testimony of Sybelle E. Faul.)

talked to Ralph Myers about the fraudulent tax entries, did you have a conversation with your husband what to do about this matter?

A. I told him I thought he should quit working for him [16] but he felt he was well paid for his job and it was the type of work he liked to do, it was the largest company in Salinas at the time, and a job of his type wasn't easy to get, and he felt, he could continue and maybe some day he would stop Ralph from this.

Q. Did you hear any conversation between your husband and Ralph Myers why your husband was worried about these tax entries, these fraudulent entries?

A. Well, yes, and he always told him it was none of his business, and he wouldn't expose him to anything. But I don't think he wouldn't be exposed to it and wouldn't be accused. In fact, he worried a great deal about it.

Q. All right. Now, do you know what, if anything, Mr. Faul did in 1944 for the purpose of protecting himself against any possible future charge?

A. Well, yes. He came to San Francisco. I didn't come with him, but he came to talk to some Government man, just what he should do to protect himself, and they told him he should make records and have evidence so that he wouldn't be exposed to it himself.

Q. And when was it, about, that he came home

(Testimony of Sybelle E. Faul.)

and started to make records, if he did start to make records, any records?

A. Well, it was February or March.

Q. What year? A. Of '44. [17]

Q. Did you see your husband making those records?

A. Yes, I did. It was at home and at the office during very late hours at night, because his hours were very late. He was never home before midnight.

Q. Did you ever go to the office after office hours?

A. Yes, and he showed me, and I am not terribly smart about books, so it didn't mean a great deal to me.

Q. What did you see, what did he show you?

A. The false entries.

Q. Do you know what he did to keep these records?

A. Well, he made copies and, oh, he was forever at the typewriter and he used to bring them home, he brought the typewriter home, he brought the books home, he did everything to protect himself, and I am sure at the time, at that time, he was only doing it to protect himself.

Q. And he kept this making of records during the year of 1944? A. Yes.

Q. And later on did you see him making these records? A. '45 and '46.

Q. Do you recall February, 1946—Incidentally, before you answer that question, where did Mr.

(Testimony of Sybelle E. Faul.)

Faul keep those records that he made either at his home or at the office?

A. We had an old safe in our house, we bought a very old home in Salinas, and he used to keep them in it. [18]

Q. In February, 1946, do you recall that you had a conversation with Mr. Ralph Myers?

A. Yes, I did.

Q. Where was that?

A. That was in Tassajara, and Mr. Gothenburg was there at the time.

Q. All right. Before that did you have a conversation with Mr. Ralph Myers, before your husband was fired from his job?

A. Well, yes. He called me and told me that he felt my husband shouldn't interfere in his fraud, of the way he kept his books, and that he hired another man to do it, and that he would do anything for me that he could do for me, and would I take Tassajara Hot Springs.

Q. One moment. When was that?

A. In '46.

Q. Was it a personal conversation or over the telephone?

A. Yes, it was over the telephone. I was in Palm Springs.

Q. And Mr. Ralph Myers called you?

A. Yes.

Q. Did he at that time tell you that he fired your husband? A. He told me.

(Testimony of Sybelle E. Faul.)

Q. And your husband stopped being employed by the Myers [19] Company in March, 1946?

A. Yes.

Q. When did your husband stop working for the Myers Company?

A. Well, I think it was March.

Q. What year? A. Of '46.

Q. You testified that Mr. Myers offered you Tassajara? A. Yes.

Q. Will you tell us something more about that?

A. Well, he told me that it wouldn't be a paying proposition for maybe two or three years, he was going to give me a new hotel in Tassajara, but he would give me the bar on the main street that he had bought and that would carry me over with expenses until we had the new hotel in Tassajara Hot Springs.

Q. Did you then move to Tassajara Hot Springs? A. Yes, I did.

Q. Did you take charge of the place?

A. Full charge, yes.

Q. Was your husband at that time in Salinas, or where was he?

A. He was with me in Tassajara.

Q. What was he doing?

A. He assisted with the books and the bar and everything [20] that he could. He was at that time very nervous and high-strung.

Q. When was it that you moved to Tassajara, please? A. In April.

Q. You mentioned that you had a conversation

(Testimony of Sybelle E. Faul.)

with Mr. Gothenburg and Mr. Ralph Myers, or your husband had, in Tassajara. When was that, do you remember?

A. This was in July. The Gothenburgs came in for about a week, and it was at the bar, and I don't know what, how it started, but Mr. Gothenburg and my husband never had a very kind feeling for each other, I think he had been reprimanded by my husband for his false entries and he didn't like it, so he told him he caused him to lose his job, and he said, "Well, it isn't any of your business. You had no business interfering with it at all."

Q. Was Ralph Myers present at the time of that conversation?

A. Yes, but he was quite inebriated. He didn't have anything to do with it.

Q. How long did you remain with your husband at the Tassajara Hot Springs Hotel?

A. From April until August.

Q. What happened in August, 1946?

A. Mr. Myers was killed in an airplane accident and——

Q. That was Ralph Myers? [21]

A. Yes. And he always assured me that none of his family would be allowed to come in and interfere with any part of Tassajara if I took it. He didn't allow his mother, his wife, no one, to come in. And at one time I invited them, and he said, "No, because I think they will interfere. I don't want any interference. You are doing a very fine job. I don't think they should come." But as soon as Ralph

(Testimony of Sybelle E. Faul.)

died, the father, the mother, and everyone came in, and the wife, giving me orders and telling me what to do and that I had to stay until Monday morning and then I could leave, and I assured her that I had been given half of Tassajara Hot Springs, and she said that I had no part of Tassajara Hot Springs and for me to leave immediately, which I did.

Q. Did you hear any conversation between your husband and Mr. Myers, Sr., at that time, before you left Tassajara?

A. Well, he threatened both of us, he was going to break us and, oh, he was a violent man.

Q. After you left Tassajara, where did you go?

A. Salinas.

Q. Did you have any conversation with your husband about the threats that Mr. Myers, Sr., uttered?

A. Well, he was very hurt, and he thought that he should come to the Government and report these false entries, and I thought he shouldn't, and we argued about it a great deal, but as time went on and we found sure that we wouldn't [22] get anything for our services in Tassajara, he decided he would report it. At that time he did.

Q. And when was that that he went to the Government, do you know?

A. I think it was '47 that I went to the Government with him.

Q. What month of the year was that?

A. March or April—March, I believe.

(Testimony of Sybelle E. Faul.)

Q. Well, there is a——

Mr. Heisler: I think there is a copy of the fraudulence form, Form 211, which was filled out on the 22nd of February.

Mr. Boyle: If Your Honor please, this Form 211, the informer's reward form, is not available. We have searched the records here and we had Washington search the records and last week we were in teletype communication with them a number of times and they informed us finally this morning that they had located the Form 211, all of those had been decentralized in '53 and for some reason it had not been sent out here with the file, but they have finally located it. Therefore, if Counsel is agreeable, we can stipulate that the record be kept open for the purpose of putting in evidence the Form 211 when it does finally arrive.

Mr. Heisler: We find, Your Honor, I think there is evidence here showing that that was on March 22nd; as a matter [23] of fact, I think we stipulated——

Mr. Boyle: February 22nd.

Mr. Heisler: February 22, 1947.

Mr. Boyle: That the form was filled out and filed with the Internal Revenue.

The Court: Do you wish to give this an exhibit number?

Mr. Boyle: 1-A. We can attach it to the stipulation of facts which will be introduced, or the file.

The Court: You will supply that within 10 days?

Mr. Boyle: Yes, Your Honor.

(Testimony of Sybelle E. Faul.)

Mr. Heisler: Then, it is agreed that the form was filled out on February 22nd, 1947, so Mr. Faul must have gone before that date to San Francisco.

Mr. Boyle: Yes.

(Petitioner-Respondent Joint Exhibit No. 1-A was reserved.)

24. P

PETITIONER-RESPONDENT EXHIBIT NO. 1-A

Form 211
 TREASURY DEPARTMENT
 INTERNAL REVENUE SERVICE
 (Revised July 1944)

CLAIM FOR REWARD UNDER TREASURY DECISION NO. 5379

I, Elmer S. Faul
(Name)
217. Pajaro Street Salinas Calif.
(Address)

being duly sworn, depose and say that, according to my best information and belief, I furnished to

John E. Boland Asst Chief Field Deputy
(Name, title, and address of Bureau officer)

on the 22nd day of Feb., 1947, information which led to the
 detection of a violation of the internal revenue laws of the United States by _____

Ralph C. Meyer Co ✓ Salinas Calif
(Name) (Address)

and to the recovery of internal taxes, penalties, fines, and forfeitures; that the information furnished
 by me was submitted pursuant to the offer of reward made by the Commissioner of Internal Revenue in
 Treasury Decision No. 5379; and that I was not an officer or employee of the Department of the
 Treasury at the time I came into possession of the information or at the time I divulged it.

Based upon the foregoing, I now apply for a reward and claim 10 per centum of the amount
 recovered.

Elmer S. Faul ✓
Claimant.

Sworn to and subscribed before me this 22nd
 day of Feb., A. D. 1947

John E. Boland. Asst. call.
(Title)

BUREAU OF INTERNAL REVENUE

Claim No. 8990

TREASURY DEPARTMENT

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE

Washington, D. C.,

CLAIM OF

Elmer J. Paul

For Reward Offered June 22, 1944

(Treasury Decision No. 5379)

RECEIVED FEB 21 1952

G A O DIVISION

The within claim of

Elmer J. Paul

approved and

General Accounting Office, Claims Division, for settlement in

the sum of sixty-eight thousand

hundred thirty-seven and 96/100 dollars,

CASE OF

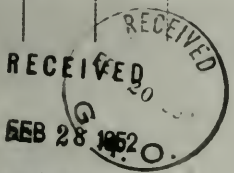
Sellins, Valley Ice Co. Ltd. and
X Ralph E. Myers, Deed.

First District of California

Amount claimed 10% \$

Amount allowed 1% to 10% \$68,837.96

OFFICE OF CHIEF COUNSEL



paid from the appropriation, "Salaries & Expenses, Bureau of Internal Revenue."
2020902-3
TOST-2-13-52

Fred J. Martin
Assistant Commissioner

OFFICE OF THE SECRETARY OF THE TREASURY,

APPROVED FOR
ACT.

CLAIMS DIV. MISC. and referred to the Comptroller General of the United States.

dollars,

19

Secretary

(Testimony of Sybelle E. Faul.)

Q. (By Mr. Heisler): Were you with him at that time?

A. I was with him, yes, sir.

Q. Where did you go with him?

A. I think it was this building, we went to Mr. Boland, and of course he assured us he had to have a great deal more information and that his agents would contact us, and it wasn't too long after that that, I think it was Mr. Van Schroeder and [24] Mr. Shurlock and one other man——

Mr. Van Schroeder, I said——came to our house.

Q. Was it Mr. O'Connell?

A. Yes, Mr. Jack O'Connell came to our house. Well, this seemed to go on for an eternity. I had Government men in my house until I felt it wasn't my house any more, it was an Internal Revenue Bureau. And then my husband became extremely nervous after several years of this, and we moved to Carmel.

Q. When did you move to Carmel?

A. In '48.

Q. During the year of '47 you stated there were Government agents in your house? A. Yes.

Q. They were there for what purpose?

A. Getting information as to Ralph Myers' fraud.

Q. Do you recall anything, any particular questions that were directed to Mr. Faul?

A. Well, they assured him they would never have found any of the fraud or any of the false entries if it hadn't been for his help.

(Testimony of Sybelle E. Faul.)

Q. Who said that, Mrs. Faul?

A. Well, both Mr. Van Schroeder and Mr. Shurlock.

Q. During the year of 1948 were there any Government agents in your house in Salinas in connection with tax information? [25]

A. Yes, sir.

Q. How often would you say in 1948 these agents came to the house?

A. I don't remember how often, but it just seemed it was all the time that they were in my home.

Q. Did you overhear any conversation between your husband and the agents, what these conversations—

A. Well, it was always information they were asking for, and I am sure that he supplied them with plenty of it.

Q. Now, you say in '48 you moved to Carmel?

A. Yes, sir.

Q. And do you recall whether in 1949 any of the Government agents came to your house with reference to information concerning the R. E. Myers Company?

A. I think he only saw Mr. Shurlock in Carmel.

Q. What year was that? A. In '49.

Q. Did you ever hear any conversation between Mr. Shurlock and Mr. Faul?

A. Well, it was always the Government case, that is all I can—that they ever talked about, because we were never intimate friends, I didn't

(Testimony of Sybelle E. Faul.)

know Mr. Shurlock before this Government case came into my life.

Q. Do you recall when you purchased your house in [26] Carmel? A. It was '49.

Q. What month when you moved in there?

A. January.

Q. January of '49. Did Mr. Shurlock come to your house in 1949 to obtain additional information on the Myers case?

A. I think it was information on the Myers case. We were never personal friends, and my husband always met in reference to the Government case when he met with Mr. Shurlock.

Q. Did you ever see your husband and Mr. Shurlock when they closeted themselves in a room, taking out the records and the files that Mr. Faul had collected during the years since '44?

A. No, sir, I didn't. I saw them do it, but I didn't know what they were talking about.

Q. Do you recall in 1949 a conversation with reference to the bookkeeping machine at the R. E. Myers Co. between Mr. Shurlock and Mr. Faul?

A. Well, it seems that when the records were made, the false entries were made, they used the bookkeeping machine and in the evening when the bookkeeper herself was on vacation, and my husband came home to tell me that the whole office was filled with papers, evidently they didn't know how to——

Mr. Boyle: This is all hearsay now. She is testify-

(Testimony of Sybelle E. Faul.)

ing about something her husband told her about what went on at [27] the office. I object.

Mr. Heisler: I thought I was asking her if she overheard any conversation between her husband and Mr. Shurlock. Mr. Sherlock represented the Government, so it would not be hearsay.

The Court: Read the question.

(Whereupon the last question was read.)

Q. (By Mr. Heisler): Do you recall such a conversation?

A. Yes. They evidently didn't know how to use this tremendous bookkeeping machine, so they were practicing evidently for hours with all the papers, all the papers were thrown around the office, because I saw this myself, and they jammed the machine so badly, with these false entries, that when the bookkeeper came back she couldn't operate it. They had to have a great deal of work done on it.

Q. Do you recall that in May, 1950, Mr. Boland called your husband to come to San Francisco for a certain purpose?

A. Yes.

Q. Did you go with your husband?

A. Yes. I went with my husband, I thought we were coming to the Internal Revenue Building, but instead he had us come to his apartment which he then lived in.

Q. Did he ask for any additional information of your husband? [28]

A. Well, yes; my husband went into the kitchen,

(Testimony of Sybelle E. Faul.)

he was very high-strung and nervous and he said he didn't want to go without me, and I had to go with him, he said, because he didn't know his purpose for seeing him. And really nothing much took place, because they were talking in the kitchen for a short time and then they came out and we left.

Q. Was Mr. Boland a personal friend of yours or your husband's?

A. No. We never saw him except in connection with this case.

Q. Do you recall a letter written to your husband by Mr. Parsons, Assistant Secretary of the Treasury in Washington, in the fall of 1950?

A. Yes, sir.

Q. And do you recall substantially what was in that letter?

A. They had to have more information before they could pay him his reward, it was impossible to give it to him unless they went back over the books and got more information. And they also told him that when we were in New York.

Mr. Boyle: I object. Your Honor, this is not the best evidence. It is hearsay, too.

Mr. Heisler: If Your Honor please, I wrote to Mr. Boyle, and I would like to ask him whether he would be kind enough to submit as our exhibit a copy of Mr. Parsons' letter [29] of October, 1950, informing Mr. Faul that such additional information is needed.

Mr. Boyle: Did you find it?

(Testimony of Sybelle E. Faul.)

Mr. Heisler: No, but I think I can find it. I can give you the exact date.

Mr. Boyle: There is no objection. That letter can go in.

The Court: Do you have the letter?

Mr. Heisler: I don't have, Your Honor, a copy of the letter at all.

The Court: Can you furnish that letter?

Mr. Boyle: Yes, we can furnish a copy of the letter.

Mr. Heisler: Fine. That may be, then, attached to the stipulation as Petitioners' Exhibit A-2?

Mr. Boyle: To be.

Mr. Heisler: To be, fine.

Mr. Boyle: You just make that your own.

Mr. Heisler: I say, Petitioners'.

Mr. Boyle: That won't be the proper exhibit number, then.

Mr. Heisler: All right, then, I make it Petitioners' Exhibit 1.

The Court: 2. Exhibit 2 will be furnished separately [30]

(Petitioners' Exhibit No. 2 to be furnished.)

Q. (By Mr. Heisler): After this letter was received by Mr. Faul, do you know whether Mr. Shurlock came again to your house in Carmel to talk to Mr. Faul? A. This was in 1950?

Q. 1950, yes. A. Yes, sir.

Q. Do you know what the conversation was about?

(Testimony of Sybelle E. Faul.)

A. It was never over anything between the two of them but the Government case.

Q. Do you recall a particular conversation in '50 or '51 between Mr. Shurlock and your husband concerning the fraud penalties against the Myers Company?

A. Yes; he told them there wouldn't be, he didn't think there would be a fraud penalty but if there were a fraud penalty it would be a great amount.

Mr. Boyle: I object, unless you lay a proper foundation for her being present and so forth.

Mr. Heisler: I can do so. I am sorry.

Q. (By Mr. Heisler): Do you recall any conversation between Mr. Shurlock, the Government agent, and your husband in Carmel, California, when you were present and where the conversation pertained to [31] any possible fraud penalty to be assessed against the Myers Company?

A. Yes. I think he, at the time, said it would be \$500,000.00 fraud penalty.

Mr. Boyle: I object, Your Honor. There is no proper foundation laid yet for that. Who was present, when did it take place, and where did it take place?

Mr. Heisler: We are coming to that.

Q. (By Mr. Heisler): You recall such conversation, is that right? A. Yes.

Q. Where was the conversation?

A. In my home in Carmel.

Q. About what time of the day was that?

(Testimony of Sybelle E. Faul.)

A. I think about 2:00 o'clock in the afternoon.

Q. Who was present?

A. Mr. Shurlock's wife and myself and my husband and Mr. Shurlock.

Q. The four of you?

A. And Mr. Shurlock, yes; Mr. Shurlock, his wife, my husband and I.

Q. The four of you? A. Yes.

Q. Will you please tell the judge now what was said by whom? [32]

A. Well, he felt that if——

Q. (Interrupting): Who is "he"?

A. Mr. Shurlock was the one who said that the fraud would be about \$500,000.00, the penalty, and if it were that much his reward would be twice as much as what he thought it was going to be.

Q. Did Mr. Shurlock at that time ask Mr. Faul to supply any additional information?

A. That I don't remember.

Q. In 1952 your husband received a reward in the approximate amount of \$68,000.00?

A. Yes, sir.

Q. Do you recall any tax payment that was made by him on this reward? A. Yes.

Q. Do you remember the approximate amount?

Mr. Boyle: If Your Honor please, this is all a matter of record, and we have the returns which will go in——

Mr. Heisler: Fine.

Mr. Boyle: Can we shortcut this thing?

Mr. Heisler: Fine. Can it also be stipulated, sir,

(Testimony of Sybelle E. Faul.)

that there was a payment of \$28,000.00 on the first estimate and that there was a refund of \$8,825.46? Right?

Mr. Boyle: Yes.

Mr. Heisler: I am sorry, your Honor. It will be [33] stipulated that that was the amount first paid and that there was a repayment and reimbursement in the amount of \$8,825.46.

The Reporter: Did you say "Yes," Mr. Boyle?

Mr. Boyle: I didn't make any remark.

Mr. Heisler: It may go in?

(No response.)

Mr. Heisler: At this time I would like to submit a partial stipulation of facts made by Counsel and myself.

The Court: Are there any exhibits attached to it?

Mr. Heisler: We will submit exhibits, yes.

The Clerk: There are none attached to it now.

The Court: The stipulation will be received.

Mr. Boyle: There is only one exhibit that will be attached so far, and that is the Form 211. The other exhibits will go in as the exhibits of the respective parties, as the respective parties introduce them, rather than attached to that.

Mr. Heisler: If Your Honor please, I would like to ask Counsel for the Government to supply us copies of the certificate dated March 21, 1952. This certificate is No. 2021588, issued by the General Refunding Office in Claim No. S-962662, in the amount of \$68,387.96, chargeable to the account, "Salaries and Expenses, Bureau of Internal Revenue, 1952."

(Testimony of Sybelle E. Faul.)

May we have such a copy, sir? [34]

Mr. Boyle: If Your Honor please, the original of that must have been sent to the Petitioner. The Internal Revenue file contains no copy, so if there is a copy, it presumably is with the General Accounting Office.

Mr. Heisler: I see. If you don't have any copy—I thought you had a copy—we have none of these documents, and that was the reason I was asking in my letter whether you could help us.

If Your Honor please, I would like to ask the Court's permission to go over the files of the Government which Counsel so kindly permitted me to see, and if there are any exhibits which I would like to introduce into evidence I will ask for the approval of Counsel.

Mr. Boyle: If Your Honor please, this particular file that Counsel is referring to is merely a letter file during which, from about 1950 until 1952, during which time Mr. Faul was writing many letters asking for his reward—we have no objection to Petitioner putting those in evidence, but we do not think they have any probative value or that they are material to the case. We have no objection, however, if he wants them in.

Mr. Heisler: I see here some documents dated 1947.

Mr. Boyle: I beg your pardon, Counsel. There are about three documents in 1947 where the Form 211 was sent back to Washington to the Chief

(Testimony of Sybelle E. Faul.)

Counsel, and the Chief Counsel [35] notified Mr. Faul that "We have received your informer's claim, it has been assigned a claim number and you will hear from us eventually." That is the only purpose.

Mr. Heisler: Of course, I don't want to introduce in evidence anything that has no probative value, but I would like to go over it, if I may. Do you have any objection to that?

(No response.)

Q. (By Mr. Heisler): During 1952 you filed a tax return in which you included the \$68,000.00 reward, is that correct? A. Yes.

Q. And then you received a deficiency assessment in the amount of \$18,350.00, is that correct?

A. Yes.

Q. Mrs. Faul, did you personally ever receive any part of the \$68,000.00 of the reward?

A. No, sir, I did not.

Q. All monies went to your husband?

A. Yes, sir.

Q. You don't know what happened to the money, do you? A. I borrowed \$10,000.00.

Q. From him? A. Yes, sir.

Q. Did you pay it back to him? [36]

A. Yes.

Q. Out of a little business which you maintain yourself? A. Yes, sir.

Mr. Heisler: That is all.

The Court: Just a moment.

(Testimony of Sybelle E. Faul.)

Cross-Examination

Q. (By Mr. Boyle): Was your husband an employee of the Salinas Valley Ice Company in 1944?

A. No. It was Ralph Myers Company. I don't know if they called it both the same or not, but I think it was Ralph Myers Company. You see, they were two, the ice company was a little different from the Ralph Myers Company. The Ralph Myers Company was a packing company and the ice company was just an ice company, nothing else, just ice, it supplied ice. And I understood the father, you see——

Q. (Interrupting): That is enough.

Mr. Boyle: If I may, to clear the record, Your Honor, I would like to say that there is one corporation involved here, the Salinas Valley Ice Company, and there were also individual returns filed by Ralph E. Myers, but there were no returns filed by any Ralph E. Myers Company, and that that is not a legitimate company except that it was just a fictitious name used for the operations of the Salinas [37] Valley Ice Company.

Is that correct, Counsel?

Mr. Heisler: I have here on your file, on the letterhead of the Internal Revenue Service, signed by Mr. James E. Smith, Collector, who writes on March 3, 1947, for the Bureau of Internal Revenue, Washington, D. C., and he says, "This claim of Mr. Faul's pertains to the alleged violation of the In-

(Testimony of Sybelle E. Faul.)

ternal Revenue laws by Ralph E. Myers Company, Salinas, California." So——

Mr. Boyle (Interrupting): If Your Honor please, there was confusion until this case came back and was set straight by Mr. Shurlock, the examining agent, and he will take the stand, and I think it would be better to wait and let him clear it up.

The Court: Any other cross-examination?

Mr. Boyle: Yes.

Q. (By Mr. Boyle): Was your husband an employee of Mr. Ralph Myers in 1945?

A. Yes, and in 1946, yes.

Q. In 1946? A. Yes.

Q. Why didn't your husband furnish this information to the Government in those years, for instance, 1944?

A. Well, maybe they didn't ask for it. You see, he [38] didn't have the records, only information.

Q. Why didn't he furnish that information in 1944? Did he ever tell you why?

A. No. He gave them everything they asked for and everything they wanted. Maybe they didn't want the records.

Q. He knew at that time that the company was defrauding the Government? A. Yes, sir.

Q. And he was an employee at that time?

A. Yes.

Q. Your husband did not inform on the company until after he was fired, is that right?

A. Yes.

(Testimony of Sybelle E. Faul.)

Q. What is your answer, please?

A. That is right.

Q. Did your husband write a threatening letter to Mr. Boland in 1950?

A. Not to my knowledge. My goodness, no. If he did, I didn't know it.

The Court: I couldn't hear you.

The Witness: Not to my knowledge, he didn't.

Q. (By Mr. Boyle): Were you personal friends of Mr. and Mrs. Shurlock?

A. Only through the work that they were doing, only—I had never knew them before in my life, never. I don't believe [39] we had anything in common, only for this Government case.

Q. Did you ever invite Mr. and Mrs. Shurlock to your home?

A. They always came through business.

Q. Did you invite them?

A. No. My husband did.

Q. Were you ever in their home?

A. One evening, yes, with my children.

Q. Pardon?

A. Yes, I was, yes, one evening with my children.

Q. Did you go there by invitation?

A. Yes. It was with regard to my husband. He wanted to give some type of information to Shurlock—

Q. (Interrupting): That is all. Thank you.

Do you recall a Christmas party at which, during which you had the Shurlocks, to which you invited

(Testimony of Sybelle E. Faul.)

the Shurlocks, Mr. and Mrs. Shurlock, when Mr. Ketchum, the cartoonist, was also present?

A. No, sir.

Q. You don't recall such an occasion?

A. I don't recall the Shurlocks being with us, no.

Q. Your answer, then, is that they were not there?

A. They may have dropped in, but I had no invitation extended to them.

Q. Do you recall their being there? [40]

A. No, I don't, no.

Q. Do you recall the party? A. Yes, I do.

Q. When did it take place?

A. Shortly after we moved in our home.

Q. When would that be? A. In '49.

Q. Would that be a Christmas party in 1949?

A. No, because we moved in in January, so it couldn't have been.

Q. Do you recall the date of the party?

A. No. But it was after Christmas, because we couldn't get in our house for Christmas. It was impossible, it just wasn't finished. We were dreadfully upset over it, but we couldn't get into it.

Q. Did you have anything in common with Mrs. Shurlock? A. No.

Q. How many times would you say Mr. and Mrs. Shurlock were in your home?

A. Well, during that period of time that—from '46 to '50, oh, dear, maybe 30 times.

Q. Mrs. Shurlock was there 30 times?

(Testimony of Sybelle E. Faul.)

A. Not always she. He was there, but not always with her.

Q. But she was there a great number of times, is that correct? [41] A. Yes.

Q. Mrs. Faul, you mentioned that in 1944 your husband approached the Internal Revenue Service. Is that correct? A. Yes.

Q. With whom did he speak?

A. I don't know, because I wasn't with him. He came here, and I thought it was Mr. Boland at the time. Was Mr. Boland with the Internal Revenue?

Q. What is your understanding, that he came to San Francisco?

A. He came to San Francisco, he phoned for an appointment and came. I came with him to San Francisco, and I stayed in the car, I didn't come up into the building.

Q. What address in San Francisco did you come to?

A. Well, when we drove up to this building today, I was so positive this was the one we came to.

Q. This building?

A. I don't know. I really don't know San Francisco too well. I have never lived here and I don't really know San Francisco too well.

Q. Did your husband tell Mr. Myers that he had made this visit to the Internal Revenue Service?

A. No. And he only did it to protect himself at that time, so as to have records when it came up, that surely someone would find out there was a

(Testimony of Sybelle E. Faul.)

fraud, and the person he [42] contacted at that time——

Mr. Boyle (Interrupting): That is all, Your Honor.

Redirect Examination

By Mr. Heisler:

Q. You testified that Mr. Shurlock came to your house from 1947 to 1950 about 30 times and sometimes Mrs. Shurlock came with him. When Mrs. Shurlock came to the house, what happened? Did you all sit together or what happened?

A. No, no.

Q. What happened?

A. She played the piano, and she was always at our piano, she wrote music and she was always at the piano playing when she came.

Q. And where was Mr. Shurlock?

A. He was always with Elmer.

Q. In the same room or in a separate room?

A. Not always in the same room, no, sir.

Q. Did you ever hear Mrs. Shurlock complaining to Mr. Shurlock?

A. She said we could have fun together if it wasn't always for business. And that was all the conversation.

Mr. Heisler: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Heisler: There was a letter to a [43] threatening letter, and I was wondering whether it could

be followed up, because I know nothing about it.

The Court: Have you any other witnesses?

Mr. Heisler: No other witnesses, your Honor.

That is the Petitioners' case.

The Court: Mr. Boyle?

Mr. Boyle: Mr. Shurlock.

Whereupon,

ALAN RUSSELL SHURLOCK

was called as a witness on behalf of the Respondent and having been first duly sworn, testified as follows:

The Court: State your name, please.

The Witness: Alan Russell Shurlock.

Mr. Boyle: I offer in evidence the 1952 Individual Income Tax Return for Elmer J. and Sybelle E. Faul. I will ask that I be permitted to withdraw the original and substitute a photostatic copy in place thereof.

The Court: That will be done.

Respondent's Exhibit B in evidence.

(Respondent's Exhibit B was marked for identification and was received in evidence.)

Direct Examination

By Mr. Boyle:

Q. Mr. Shurlock, by whom are you employed?

A. The Internal Revenue Service. [44]

Q. What is your position?

A. Internal Revenue Agent.

Q. How long have you been an Agent?

(Testimony of Alan Russell Shurlock.)

A. Since July 1, 1935.

Q. Where are you stationed now?

A. San Francisco, California.

Q. Have you always been stationed in San Francisco?
A. No, sir.

Q. Would you briefly describe where your post of duty has been in the past?

A. I entered the Service in New York, Second New York Division, on July 1, 1935. I was transferred to the Seattle Division on or about October of 1938. I was transferred to the San Francisco Division about October 1940. I was given a post of duty at Monterey, California, about May 1, 1941. I was transferred to San Francisco about February of 1949. That is where I am at present.

Q. Do you know the Petitioner, Elmer J. Faul?

A. Yes, sir.

Q. What was the occasion of your meeting Mr. Faul?

A. I was making an audit of a Section 722 claim filed by the Salinas Valley Ice Company for the years 1940 and '41 at Salinas, California.

Q. And you met Mr. Faul at that time?

A. Mr. Faul was the Office Manager of the Salinas Valley [45] Ice Company at the branch office known as the Ralph E. Myers Company.

Q. Will you please explain to the Court the business purpose and function and business entity known as the Ralph E. Myers Company?

A. Salinas Valley Ice Company had two branches, an Ice Division which sold ice, manufac-

(Testimony of Alan Russell Shurlock.)

tured ice, and a Packing and Farming Division which was known as the Ralph E. Myers Company. Two separate sets of books were kept, but one, a subsidiary set of books, they were controlled in one ledger.

Q. Was the Ralph E. Myers Company a corporation? A. No, sir. Just a branch, a name.

Q. A trade name? A. That is right.

Q. It filed no tax returns?

A. That is right; no, sir.

Q. Did you have occasion to meet Mr. Faul for any other purpose than the Section 722 claim of the Salinas Valley Ice Company?

A. At a later date, yes.

Q. Will you explain what date that was and what the occasion was?

A. The date was some time in April of 1947. The occasion was at Mr. and Mrs. Faul's house in Salinas, with Mr. O'Connell. [46]

Q. Who was Mr. O'Connell?

A. Mr. O'Connell was the Fraud Contact Agent for the San Francisco Division of the Internal Revenue Service.

Q. Had he come to Monterey to see you?

A. Yes, he had. He had come to me and discussed certain allegations made of fraud.

Q. On whose part?

A. On the part of the Salinas Valley Ice Company, filed by Mr. Elmer Faul.

Q. You mean the allegations of fraud were filed by Mr. Elmer Faul, is that right?

(Testimony of Alan Russell Shurlock.)

A. That is right.

Q. In other words, Mr. Faul was an informer, is that right?

A. He was an informer, yes, sir.

Q. At or about that time did you receive a list of the allegations?

A. My recollection is that it was about that time or shortly after when the file came down for the returns filed by the Salinas Valley Ice Company for the years '42 to '46, inclusive. The file may have come with that.

Q. How many items were on this list?

A. As I recall it, there was an original list of about 45 allegations. Subsequently I think additional amounts were furnished by Mr. Faul which added up to about a total of 68 [47] or 70.

Q. What was the form of the list, on what type of paper?

A. It was on a blank sheet of yellow paper 8½ by 11, written, typewritten, with no headings, just as a sort of a brief outline of each of the, of the matter involved in each allegation. It wasn't signed or anything at all. It was just merely typewritten notes.

Q. When did you start your audit of the Salinas Valley Ice Company?

A. May of 1947.

Q. Did you see Mr. Faul in connection with the list of allegations?

A. Yes, sir.

Q. When?

A. I would say all through the summer of 1947 I was in contact with Mr. Faul, through until about the fall of '47, I worked with him, I got in touch

(Testimony of Alan Russell Shurlock.)

with him quite often in connection with, as we went through these various allegations.

Q. When did he furnish you with these additional items between, beyond and up to 68 or 70, as you have testified?

A. He was employed at some other place in Salinas at the time, I think it was some tractor company, and I would visit him there and he would furnish them to me at that time.

Q. When did you receive the last of the items involved?

A. I would say sometime about June of '47. [48]

Q. When did you submit your final report on the Salinas Valley Ice Company?

A. In July of 1948.

Q. In July of 1948? A. Yes, sir.

Q. What course did the case of the Salinas Valley Ice Company then take, after you submitted your report?

A. According to procedure, no discussion of the adjustments was made with the taxpayers at all, because it was a fraud case. I submitted my report and in the course of time a protest was filed to the report.

Q. Where in the Internal Revenue Service did the case go, after it left you, that is?

A. It went to the Conference Section, sir.

Q. Do you know who the Conferee was?

A. Mr. Bruce Brace.

Q. Where was he located?

A. He was located on Battery Street, I believe

(Testimony of Alan Russell Shurlock.)

on 53 Battery Street, or it was 74 New Montgomery Street at that time.

Q. In what city? A. San Francisco.

Q. In other words, the entire case and file was sent to San Francisco after it left you, is that right?

A. Right in the same building.

Q. How far is Monterey from San Francisco, approximately? [49]

A. 120 miles.

Q. Where is Carmel in connection with Monterey? A. About four miles south.

Q. And where is Salinas from there?

A. 20 miles from Monterey.

Q. Did you discuss the case with the Conferee after, while it was in his hands? A. Yes, sir.

Q. A number of times?

A. I attended a conference, a preliminary conference, with the Conferee and with the attorney.

Q. Was Mr. Faul present? A. No, sir.

Q. To your knowledge, did Mr. Faul ever solicit or have a conference with the Conferee?

A. Not to my knowledge.

Q. To your knowledge, did the Conferee ever meet Faul? A. Not to my knowledge.

Q. When was the Salinas Valley Ice Company case closed, if you know?

A. In my recollection, it was closed around 1950.

Q. When was the last time that you discussed the Salinas Valley Ice Company case with Faul for the purpose of understanding the list of allegations that he had furnished?

(Testimony of Alan Russell Shurlock.)

A. I would say about September of 1947. [50]

Q. September of 1947, is that right?

A. That is right. That is within a month or so, but I am not sure.

Q. Did you see Mr. Faul after that time?

A. Yes, I saw him. He moved to Carmel in '48.

Q. Where were you living then?

A. I was living in Carmel. My post of duty was in Monterey, but Carmel was only four miles south of Monterey.

Q. And those cities were three or four miles, are three or four miles apart? A. Yes.

Q. And he moved to Carmel in 1948?

A. I believe so. I was instrumental in helping him get a position in a packing house in Monterey.

Q. At that time? A. In '48, yes.

Q. Where did you see Mr. Faul in 1948 and '49, if you saw him in those years?

A. I would say most of the time at his home.

Q. Were you personal friends?

A. Yes, I would say so. We got to like each other. As far as the case was concerned, the case was closed.

Q. Did your wife ever accompany you?

A. Certainly. She and Mrs. Faul were good friends.

Q. Did they have anything in common? [51]

A. Mrs. Faul and Mrs. Shurlock seemed to be interested in music a lot; they played the piano a lot.

Q. Was Mrs. Shurlock ever invited to their house? A. Yes.

(Testimony of Alan Russell Shurlock.)

Q. Were they ever in your house?

A. I think so; two or three times, I would say.

Q. In discussing, in conversing with Mr. Faul, what was the nature of your conversations in those years, 1948 and 1949?

A. Generally speaking, it went to, it went on, "When am I going to get my reward?" That was the tenor of the conversation.

Q. Was there any reminiscence about this matter?

A. Yes, there was quite a bit. We would discuss some of the issues involved, in which he had furnished information, and I would discuss, go over the points with him, that we brought out.

Q. Was Mr. Faul furnishing any information to you at that time in connection with the case?

A. No. The case—None whatever.

Q. In other words, the last information he furnished to you, as you testified, was in the fall of 1947, is that right?

A. Yes, that is the best of my knowledge.

Q. Who was Frank Myers?

A. Frank Myers was the President of the Salinas Valley Ice Company. [52]

Q. Who was Ralph Myers?

A. His son. He was the manager of the Ralph E. Myers Company, the branch, Farming and Vegetable Branch.

Q. Was there ever an indication that Frank Myers was involved in defrauding the Government?

A. We did not find any whatever, sir.

(Testimony of Alan Russell Shurlock.)

Q. You never found any indication that Frank Myers was involved, is that right?

A. No, sir. The books of the ice company were—the branch books of the ice company were good, in good condition. There was no evidence of fraudulent transactions in those books. All the fraudulent transactions took place in the books of the Ralph E. Myers Company branch.

Q. And who was the manager of that?

A. Ralph E. Myers.

Q. When did he die?

A. I understand he died in '46, in June of '46.

Mr. Boyle: What was the date of that?

Mr. Heisler: September 10, 1951, from William W. Parsons.

Q. (By Mr. Boyle): Mr. Shurlock, were you ever asked to write a report assessing the value, if any, of this information furnished by Mr. Faul, which served for the Government purposes?

A. Yes, sir. [53]

Q. Do you remember when you submitted that report? A. I think it was about May of 1950.

Q. Just in general, what was the substance of your report? What did you purport to do in that report?

Mr. Heisler: I object, your Honor. I think that if the Government has the report, that would be the best evidence.

Mr. Boyle: If your Honor please, it goes into the details of the Salinas Valley Ice Company case and I would like to confine the case, if possible, to this

(Testimony of Alan Russell Shurlock.)

taxpayer and not get into the person informed upon any more than is necessary. I don't think any purpose would be served in putting that in. I just want to bring out what Mr. Shurlock was doing in writing such a report.

Mr. Heisler: Well, I have no desire to have the complete report introduced into evidence, but I would like to see the assessment, because there Mr. Shurlock may, contrary to his testimony, refer to subsequent additional information from Mr. Faul, after June or July or September of 1948, and I think that is important for the purpose of the hearing here.

The Court: Did you wish to have it submitted?

Mr. Heisler: I would like to have the report as it pertains to the evaluation of the information supplied by Mr. Faul, because that would obviously refer to the dates and the additional information received from Mr. Faul, and that may be [54] in contradiction to Mr. Shurlock's statement.

The Court: Let's proceed.

Have you anything further, Mr. Boyle?

Mr. Boyle: Yes, I have a few more questions, your Honor.

Q. (By Mr. Boyle): By whom were you instructed to prepare that report, Mr. Shurlock?

A. That, in accordance with the Internal Revenue procedure, in cases where there are rewards.

Q. For what purpose?

A. The purpose is to inform the Government as

(Testimony of Alan Russell Shurlock.)

to the value of the information furnished by the informer and to determine the amount of reward.

Mr. Boyle: I offer in evidence a letter to Mr. Boland from Mr. Emler J. Faul, dated April 13, 1951.

The Court: Is there any objection?

Mr. Heisler: No objection, your Honor.

The Clerk: Respondent's Exhibit C in evidence.

(Respondent's Exhibit C was marked for identification and was received in evidence.)

RESPONDENT'S EXHIBIT C

Carmel, California

April 13th, 1951.

Mr. John J. Boland,
Acting Chief Field Deputy,
100 McAllister Street,
San Francisco, California.

Dear Mr. Boland: Referring to JJB:SFD:825

Nearly 3 weeks have elapsed since receiving your letter of March 26th advising me that you expected to have some information regards to my Claim for Reward in the above Case. This matter of no replies but promises has been going on for several years as your files as well as the ones in Washington will readily show. I have been constantly pushed around

(Testimony of Alan Russell Shurlock.)

and ignored, therefore, I feel that it has reached the point where it will be necessary for me to use other steps unless same is taken care of on or before May 1, 1951.

The government, so I understand, has been paid in full their share several months ago, therefore, I fail to understand why I have not received my share.

As you can see from our leading metropolis newspapers, recently there has been scandal connected with your Department in Salinas as well as other points in our State of California, and if this case should be brought out in the light it will not be very pleasant for many concerned. You know yourself there was fraud connected with this case, this party was never exposed—did not lose his license to do business and is still operating.

I feel that I have not been treated fair and unless it is taken care of with a substantial reward as per above, it will be necessary for me to find another way to secure what is due me.

Very truly yours,

/s/ ELMER J. FAUL.

C/C Chas. Oliphant, Chief Counsel—US Treas.
Dept. Bureau Int. Rev., Washington 25, DC

Received in evidence June 24, 1957. [55-A]

(Testimony of Alan Russell Shurlock.)

Mr. Boyle: I offer in evidence as Respondent's next exhibit in order a letter to Mr. Parsons from Mr. Faul, dated September 4, 1951.

Mr. Heisler: No objection. [55]

The Court: It will be received.

The Clerk: Respondent's Exhibit D in evidence.

(Respondent's Exhibit D was marked for identification and was received in evidence.)

RESPONDENT'S EXHIBIT D

Carmel, Calif.

Sept. 4, 1951.

Air Mail

Mr. William W. Parsons,
Adm. Assist. Secty.,
Treasury Dept.,
Washington, D. C.

Dear Mr. Parsons: Re: Reward Claim No. A-412190

I am in receipt of your airmail letter of Aug. 9th, 1951, advising me that my claim is receiving active consideration. But still another month will have elapsed in a very few days since I last heard from you and no reward has been received.

Mr. Bolland of your San Francisco office advised me several months ago that all papers had been

(Testimony of Alan Russell Shurlock.)

forwarded to Wash., D. C., in connection with this case and that I should receive my reward shortly.

Just all the delay in paying same I cannot understand as several months have elapsed, however, I realize this is one of the largest cases in the history of your Dept. and naturally expect my reward to be in proportion.

Anything that you can do to expedite same will be greatly appreciated and trust same will be forthcoming before the close of month of September.

Thanking you for an early reply and if possible a warrant, I am,

Sincerely yours,

/s/ ELMER J. FAUL,

P. O. Box 248—Carmel, Calif.

Received in evidence June 24, 1957. [56-A]

Mr. Boyle: I offer as Respondent's next exhibit in order a letter to the Commissioner of Internal Revenue from Mr. Faul, dated March 27, 1950.

Mr. Heisler: No objection.

The Court: It may be received.

The Clerk: Exhibit E in evidence.

(Respondent's Exhibit E was marked for identification and was received in evidence.)

RECEIVED IN
MAR 27 1950
CHIEF COMMISSIONER'S OFFICE
FOR THE
BUREAU OF INTERNAL REVENUE

79
51-8

Carmel, California's,
March 27, 1950.

Commissioner of Internal Revenue,
Washington, D. C.

Dear Sir: Re: Salinas Valley Ice Co. - Tax Evasion & Fraud.

Handwritten notes:
Total
4-6-50
21

On Feb. 22, 1947, I reported to Mr. John Boland of your San Francisco Office the above case, with records to support my claim. Shortly thereafter your Mr. Jack O'Connell of your S. F. Office called upon me with several other representatives of his department. At that time I was residing at 217 Lajaro St. Salinas, Calif. but about 2 years ago I moved to Carmel, Cal., where I am now residing, post office address below. During the past 2 years I have contacted Mr. O'Connell personally whenever I happened to be in San Francisco to ascertain how the case was progressing as understood it took a long time checking the records and recently he referred me back to Mr. Boland whom I then advised me he had heard nothing from Washington D.C. as Mr. O'Connell's records on this particular case would be sent to Washington, D. C. and shortly thereafter the amount of claim would be sent to him to collect. I was in San Francisco about a month ago and Mr. Boland said he had heard nothing then. I was in San Francisco last Friday - March 24th, 1950, and I contacted Mr. O'Connell whom suggested that I write you direct to ascertain present status

J
O
9

of this case. Mr. O'Connell as his local representative Alan Shurlock conferred information numerous times during first 2 years after I reported this case for

At the time I reported this case originally to Mr. Boland,

I signed a paper protecting me for claim which this matter was thoroughly investigated and settled so please let me hear from you in the near future, as over 3 years have elapsed and I thought it surely must be settled by now.

Thanking you in advance for an early reply, I am,

Handwritten signature:
John Paul

April 5, 1950.

WEDS DAVIS,
ROOM 5320:

I do not believe a new case is needed at this time upon the basis of Mr. Paul's letter, as it is apparent he has the taxpayer involved in his pending claim confused with another company. Just send the letter along, cross referencing to our case.

TAX COURT OF THE U.S.
MARKED FOR IDENTIFICATION
ADMITTED IN EVIDENCE
JUN 24 1957
PETITIONER'S EXHIBIT
RESPONDENT'S EXHIBIT
DOCKET NO. 52544

A. I. Monroe
Handwritten: noted
b

Received MARCH 27, 1950.

Mr. Boyle: If your Honor please, these are part of the Government's file, so I ask permission to withdraw these, and I will substitute photostatic copies.

The Court: That will be done.

Mr. Boyle: That is all, your Honor.

Mr. Heisler: I have some cross-examination.

Cross-Examination

Q. (By Mr. Heisler): Mr. Shurlock, you stated on direct examination that Mr. Faul supplied prior to the beginning of your investigation allegations numbering about 45, and that subsequently he supplied added information, making a total number of allegations of about 68; is that correct? [56]

A. Yes, sir.

Q. When were these additional, about 23, allegations supplied to you or to the other Agents?

A. They were supplied to me between April of '47 and I would say about July of 1947.

Q. You testified on direct examination, you said that you met with Mr. Elmer J. Faul concerning the Salinas Valley Ice Company the last time in June, 1947; then you stated that it may have been in September of '47.

A. Yes, sir.

Q. So which date is the correct one?

A. I would think September would probably be the correct one.

Q. And after September '47 he supplied no information and you asked him for no enlightenment and no data; is that correct?

A. That is correct, to the best of my recollection.

(Testimony of Alan Russell Shurlock.)

Mr. Heisler: I am offering into evidence a letter written by Mr. William W. Parsons, Administrative Assistant Secretary of the Treasury, on September 10, 1951, to Mr. Faul, and I want to have this document marked, your Honor, as Petitioners' Exhibit 3.

The Court: Will you submit it to the Clerk to be marked for identification?

(Petitioner's Exhibit No. 3 was marked for identification.) [57]

The Court: Will there be objection to these?

Mr. Heisler: I want the Court's permission to withdraw these to make photostatic copies of these documents.

The Court: It will be received.

The Clerk: Petitioner's Exhibit 3 in evidence.

(Petitioner's Exhibit No. 3 was received in evidence.)

PETITIONER'S EXHIBIT No. 3

September 10, 1951.

Dear Mr. Faul:

Receipt is acknowledged of your letter of September 4, 1951, concerning your Reward Claim No. A-412190.

As I stated in my letter of August 9, 1951, your claim is receiving active consideration and everything possible is being done to expedite the case. However, it has been found necessary to request ad-

(Testimony of Alan Russell Shurlock.)

ditional information from the field office in California and your case cannot be concluded until that information is received at headquarters.

You may be assured that upon receipt of this additional information every consideration will be given to bringing this matter to a final conclusion.

Very truly yours,

/s/ WILLIAM W. PARSONS,
Administrative Assistant
Secretary.

Received in evidence June 24, 1957. [58-A]

Q. (By Mr. Heisler): Do you know that on September 10, 1951, Mr. Parsons wrote to Mr. Faul, among others, and I am quoting: "It has been necessary to request additional information from the Field Office in California, and your case cannot be concluded until that information is received at headquarters." Did you know that Mr. Parsons of the Washington Office asked the Field Office with which you were connected for additional information on this Myers tax matter?

A. Was that Salinas Valley Ice or Ralph E. Myers?

Q. Well, whatever the case, the matter is not captioned, but it refers only to Mr. Faul's claim numbered A-414190. Whatever the heading is, I

(Testimony of Alan Russell Shurlock.)

don't know. The Department did not caption the letter.

A. Well, I can't give you any information on that. I put my reports in before that time.

Mr. Heisler: I would like to ask that this other document, Mr. Faul's letter of November 9, 1951, be marked [58] Petitioner's Exhibit 4.

The Court: It will be so marked.

The Clerk: Petitioner's Exhibit 4 for identification.

(Petitioner's Exhibit No. 4 was marked for identification.)

The Court: Do you offer this in evidence?

Mr. Heisler: I would like to offer this in evidence.

Mr. Boyle: No objection.

The Court: It will be received.

The Clerk: Petitioner's Exhibit 4 in evidence.

(Petitioner's Exhibit No. 4 was received in evidence.)

PETITIONER'S EXHIBIT No. 4

Air Mail

Carmel, California

Nov. 9, 1951.

Mr. William W. Parsons,
Administrative Assist. Secty.,
Treasury Dept.,
Washington, D. C.

(Testimony of Alan Russell Shurlock.)

Dear Mr. Parsons: Re: Reward Claim No. A-412190.

I received your letter of Sept. 10th relative to the above claim; nearly 2 months have elapsed again and still I have not received my reward. In your letter of the above date you stated that you were awaiting additional information from your field office here in California. I am wondering if this has been recd. and if so when I can expect my reward. I dislike writing you so often on this matter but this claim has been hanging fire since Feb., 1947 which will be 5 years in 3 more months and inasmuch as the amounts due the Govt. were collected in full early part of this year, 1951, it seems only in order that my part should be forthcoming by this time. So please do not think I am "pesty" by writing you so often but I feel that I am entitled to some consideration inasmuch as this was one of the largest cases ever collected by your Department and I do not think I should be constantly ignored. I feel that I have done all in my power to cooperate with your various people that called upon me for additional information from time to time so hope that upon receipt of this letter you will have all necessary information and forward me my check in full, and if not, please try to rush same along and oblige,

Very truly yours,

/s/ ELMER J. FAUL,

P. O. Box 248—Carmel, Calif.

Received November 14, 1951.

Received in evidence June 24, 1957.

(Testimony of Alan Russell Shurlock.)

Q. (By Mr. Heisler): Did you know that on November 9, 1951, Mr. Faul wrote to Mr. William W. Parsons, Administrative Assistant Secretary, Treasury Department, and in this, among others, he stated: "I feel that I have done all in my power to co-operate with your various people that called upon me for additional information from time to time." Do you know whether it is true or false what Mr. Faul wrote in November, 1951 that he co-operated with the agents who called upon him from time to time for additional information?

A. Speaking from my own experience, I would say that he co-operated fully with me.

Q. But did he co-operate and supply the additional [59] information after September, 1947?

A. Not to my knowledge.

Q. If that is the case, why is it that your report evaluating his services was not dated until May 11, 1950? Why were you waiting from September, 1947 to May, 1950 to make an evaluation, if there was no information supplied in the intervening time?

A. After I wrote my report, the case, according to Internal Revenue procedure, is transmitted to the Conference Section for further action. Until that case is finally disposed of, that report that you referred to cannot be written.

Q. Incidentally, who was the Conference officer, please? A. Mr. Bruce Brace.

Q. Did you see his report, conference report?

A. I can't be sure whether I saw it or not.

(Testimony of Alan Russell Shurlock.)

Q. Do you know that he recommended a fraud assessment of about 50 per cent?

A. I am not sure—I have forgotten what he did do, because it was out of my hands, it was his work and not mine.

Q. Do you remember that you made the report contrary to Mr. Brace's report, recommending against fraud assessments?

A. No, I don't recall that I did.

Q. Do you remember that the Conference Officer wrote a subsequent report and pointed out that his recommendation was to assess for fraud and that the Field Agent, Mr. Shurlock, [60] recommended against it? Do you recall that?

A. No. I would have to refresh my mind with looking at my report. It's so long ago, I wouldn't remember what I recommended.

Q. All right. Now, Mr. Shurlock, you don't remember whether or not you recommended against the Conference Officer for the fraud assessment, but you remember that the last time you met Mr. Faul was in September, 1947. Why is it that you remember one so well and you don't remember the other at all?

A. Which case are you talking about, sir.

Q. I am talking about that you don't remember that you recommended against the fraud assessment.

A. On which taxpayer?

Q. On the Myers matter, Salinas, whatever the name is.

A. There are three taxpayers involved. There

(Testimony of Alan Russell Shurlock.)

are the Salinas Ice Company, Ralph Myers and his wife. Which one are you referring to?

Q. I don't remember. There was only one case, you testified there was only one company, with two branches, and that there were no returns made by the branches, only by the company. So in consequence there could not have been three fraud assessments, is that correct?

A. No, sir, it isn't correct.

Q. All right.

A. Just a minute. There are two individual taxpayers [61] who filed returns and there is one corporate taxpayer.

Q. Yes?

A. The fraud penalty may be assessed against any of those three.

Q. My question is, however, Mr. Shurlock: Now, as you are sitting there, you do not remember whether you recommended against assessments of fraud penalty; on the other hand, you received the last information from Mr. Faul in September, 1947. How come, how is it that one is so much more important to remember after ten years, while the other is so unimportant that you don't remember until you go back to your records?

A. Well, the first one is the start of the case. I remember things very clearly at the start of the case.

Q. Now, you stated that you were assigned to the case in April, 1947 and that you had at that time about 45 items of allegations of fraud, that you ex-

(Testimony of Alan Russell Shurlock.)

amined those 45 and you discussed the other 23 later supplied by Mr. Faul, and all that work was finished from April '47 to September '47. Is that correct?

A. No. I discussed it with them, but the report wasn't submitted until a year later, until July of '48.

Q. In July, '48 you submitted your report, but from September, '47 to July, '48 you never talked to Mr. Faul about any of the information that he had?

A. I can't be sure that I never talked to him about it. [62]

Q. So, then, if you cannot be sure, when do you think you could have talked to him? Could you have talked to him in May, 1948?

A. No, I don't think—it might have been within a month or so of September.

Q. So it could have been October or November?

A. Yes.

Q. So it could have been October or November, 1947?

A. Yes. I was finished about that time, as far as the preliminary examination was concerned.

Q. Do you recall at all that there was any recommendation of fraud penalty to be assessed either against the Salinas Ice Company or against Ralph E. Myers or his estate after he died?

A. Yes, there was.

Q. Was there finally an assessment made for fraud?

A. I believe there was on the Conference Report, but I did not handle that.

Q. On the Conference Report there was a recom-

(Testimony of Alan Russell Shurlock.)

mendation for a fraud assessment. And what was your recommendation? Do you recall?

A. Fraud.

Q. Did you not recommend against it?

A. Not on the Salinas Valley Ice Company.

Q. On what? [63]

Mr. Boyle: Let's confine it to Salinas Valley. The individual returns and the reports on Myers are not before us in this case. So let us confine it to the party informed upon, upon which he was paid the reward.

Mr. Heisler: If your Honor please, I would like to point out that this report, dated May 11, 1950, that Counsel produced here, refers not only to the Salinas Valley Ice Company, but also to Frank S. Myers, Ivy Myers, and Ralph E. Myers.

Mr. Boyle: That is true, but that has nothing to do with this case.

Mr. Heisler: There is apparently a recommendation in the same report that there should be a 5 per cent negligence charge against the Salinas Ice Company and a 50 per cent fraud assessment against the Ralph E. Myers Company, because Ralph E. Myers was the beneficiary of the fraud.

Mr. Boyle: This report covered both, but the Myers returns are not involved in this case, so there is no reason to go into it.

The Court: I might point out further, you are not trying this case before a jury.

Q. (By Mr. Heisler): Mr. Shurlock, did you report to your superiors concerning the value of in-

(Testimony of Alan Russell Shurlock.)

formation supplied by Mr. Faul as follows, on page 5 of your report of May 11, 1950: [64]

“The information furnished by the informer was of good value in the investigation. Generally speaking, it was specific, based on facts and conveying details which save time in running down leads and resulted in large adjustments to taxable net income.”

Did you write that, Mr. Shurlock?

Mr. Boyle: We will stipulate this. The informer was paid. He gave information and he was paid. There is no reason to go into this.

Q. (By Mr. Heisler): Did you write that, do you know?

The Court: I sustain the objection.

Q. (By Mr. Heisler): When you wrote about the details of information, what did you have in mind? Did you have in mind just the summary of information or additional documents that you received from Mr. Faul?

A. I had in mind the 68 allegations.

Q. That is all? A. That is all.

Q. You never received anything from him, any documentary evidence, further studies or copies of other documents made by him, of the books and records of the Salinas Valley Ice Company or of Ralph E. Myers Company? A. No, sir. [65]

Q. When did you move from Monterey to San Francisco, or to Berkeley, Mr. Shurlock?

A. I moved from—my post of duty was moved from Monterey to San Francisco in February of 1949.

(Testimony of Alan Russell Shurlock.)

Q. Did you thereafter visit Mr. Faul at his home in Carmel?

A. I believe I was down there sometimes, yes.

Q. How many times did you visit from San Francisco down there? A. I recall once.

Q. Was that a purely personal visit or did you go down to get any additional information on the tax matter?

A. I had some tax work to do in the city, but nothing to do with him. The call was purely personal.

Mr. Heisler: That is all, Mr. Shurlock.

Redirect Examination

By Mr. Boyle:

Q. Is it not true that in your report of July, 1948 you recommended fraud against the Salinas Valley Ice Company and that the Conferee eliminated it and put in the 5 per cent negligence penalty in place thereof?

A. Yes, sir. That is my recollection.

Mr. Boyle: That is all, your Honor.

The Court: You are excused.

(Witness excused.) [66]

The Court: Is there any other evidence?

Mr. Heisler: That is all, your Honor.

Mr. Boyle: The Government rests.

The Court: I will allow you 60 days for simultaneous briefs and 30 days thereafter for a reply.

The Clerk: The dates for those briefs are, original briefs August 26, the reply briefs September 25.

(Whereupon, at 11:50 o'clock, a.m., Monday, June 24, 1957, the hearing in the above-entitled matter was closed.)

Filed July 9, 1957, T.C.U.S. [67]

[Title of Court of Appeals and Cause.]

PETITION FOR REVIEW

To the Honorable Chief Judge and the Circuit Judges of the United States Court of Appeals for the Ninth Circuit:

Elmer J. Faul and Sybell E. Faul, petitioners, ask this Court to review the Decision of the Tax Court of the United States entered on December 12, 1957, wherein it was held that petitioners have not established that Elmer J. Faul, one of the petitioners, performed services for the Bureau of Internal Revenue over a thirty-six (36) month period, and hence they may not claim the benefit of Section 107(a), Internal Revenue Code of 1939. Decision was entered by said Tax Court of the United States on the 12th day of December, 1957, for respondent Commissioner of Internal Revenue, and on that date it was ordered and decided that there is a deficiency in income tax of petitioners in the amount of Eighteen Thousand Three Hundred Fifty and $\frac{23}{100}$ (\$18,350.23) Dollars for the taxable year 1952.

I.

Names and addresses of petitioners:

(a) Elmer J. Faul, 875 Filbert Street, Apt. 2, San Francisco 11, California.

(b) Sybell E. Faul, P. O. Box 248, Carmel, California.

II.

Taxable period involved: The year of 1952.

III.

Tax return filed: Office of Internal Revenue Department, Salinas, Monterey County, California.

IV.

Court in which review is sought: United States Court of Appeals for the Ninth Circuit.

V.

Nature of controversy: Petitioner Elmer J. Faul was a full time employee, but not in charge of the tax records, of the R. E. Myers Company of Salinas, Monterey County, California, from February, 1941 to March, 1946. He discovered that the employing company made certain improper charges against the taxable income account. On February 2, 1947, he informed the Collector of Internal Revenue, San Francisco, California, of such improper charges and indicated that he had documentary proof thereof. The Department, on February 22, 1947, asked peti-

tioner Elmer J. Faul to continue accumulating evidence and asked him to file Form 211 for informant's reward, which he did as Claim No. 8990. Thereafter, petitioner Elmer J. Faul was repeatedly interviewed by various agents of the Bureau to whom he gave information as to the alleged improper charges by the company. On the basis of the information supplied, the Bureau recovered additional taxes from the R. E. Myers Company, and on February 18, 1952, petitioner received a reward of Sixty-Eight Thousand Eight Hundred Thirty-Seven and 96/100 (\$68,837.96) Dollars.

Petitioners filed an estimated tax return on the above reward and made a tax payment of Twenty-five Thousand Eight Hundred Twenty-five and 82/100 (\$25,825.82) Dollars.

Petitioners, in their income tax return for the year of 1952, claimed the benefit of Section 107(a) of the Internal Revenue Code of 1939, and they were given a refund of Eight Thousand Eight Hundred Twenty-five and 46/100 (\$8,825.46) Dollars; however, subsequently, respondent determined that the sum of Sixty-eight Thousand Eight Hundred Thirty-seven and 96/100 (\$68,837.96) Dollars received by petitioner as compensation for personal services "was not compensation for personal services covering a period of thirty-six (36) calendar months, or more, within the meaning of Section 107(a) of the Internal Revenue Code * * *" and, further determined that said amount is includable in full in petitioners' gross income for the year of 1952. On the

basis of such holding by respondent, a claim for deficiency in the amount of Eighteen Thousand Three Hundred Fifty and 23/100 (\$18,350.23) Dollars was assessed against petitioners.

VI.

The issue to be determined on review: Whether petitioners properly applied the benefit of Section 107(a) of the Internal Revenue Code of 1939 on their 1952 income tax return to the award of Sixty-eight Thousand Eight Hundred Thirty-seven and 96/100 (\$68,837.96) Dollars; whether the deficiency claimed by respondent in the amount of Eighteen Thousand Three Hundred Fifty and 23/100 (\$18,350.23) Dollars, or any amount, is due from petitioners.

Wherefore, petitioners respectfully ask that the holding of the United States Tax Court of December 12, 1957, which holding is adverse to petitioners, may be reviewed by this Honorable Court.

Dated, Carmel, California, March 10, 1958.

Respectfully submitted,

HEISLER & STEWART,

By /s/ FRANCIS HEISLER,
Attorneys for Petitioners.

Received and filed March 11, 1958, T.C.U.S.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To the Chief Counsel, Internal Revenue Service,
Washington, D. C.:

Please take notice that Elmer J. Faul and Sybell E. Faul, petitioners in the above-entitled cause, filed on the 11th day of March, 1958, with the Tax Court of the United States, Box 70, Washington 4, D. C., their petition that the United States Circuit Court of Appeals for the Ninth Circuit reviews the Decision of the United States Tax Court of December 12, 1957. A copy of said petition for review is herewith served upon you.

Dated, Carmel, California, March 10, 1958.

HEISLER & STEWART,

By /s/ FRANCIS HEISLER,
Attorneys for Petitioners.

Service of copy acknowledged.

Filed March 13, 1958, T.C.U.S.

[Title of Court of Appeals and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 15, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review," including Joint Exhibit 1-A, Petitioner's Exhibits 3 and 4, admitted in evidence, but excepting Petitioner's Exhibit 2, which was never furnished to the Court, and Respondent's Exhibits B, C, D and E, admitted in evidence, in the case before the Tax Court of the United States, docketed at the above number and in which the petitioners in the Tax Court have filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case as the same appear in the official docket in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 3rd day of April, 1958.

[Seal]

HOWARD P. LOCKE,
Clerk, Tax Court of the
United States.

[Endorsed]: No. 15987. United States Court of Appeals for the Ninth Circuit. Elmer J. Faul and Sybell E. Faul, Petitioners vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed April 14, 1958.

Docketed: April 18, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15987

ELMER J. FAUL and SYBELL E. FAUL,

Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

STATEMENT OF POINTS RELIED
UPON BY APPELLANTS

The appellants Elmer J. Faul and Sybell E. Faul will submit to the United States Court of Appeals for the Ninth Circuit the following points of issue in urging the review of the decision of the United States Tax Court of December 12, 1957:

1. Appellants are entitled to the benefit of Section 107(a) of the Internal Revenue Code of 1939 with reference to their 1952 income tax return on which they reported as income an informant award of \$68,837.96. Section 107(a) is applicable because appellant husband who supplied the information to the Internal Revenue Service expended more than thirty-six (36) months in gathering and supplying the information on which said award was based.

2. Services rendered by appellant husband in gathering and supplying information to the Internal

Revenue Service, on the basis of which information additional taxes were recovered by the Department, were personal services rendered within the meaning of Section 107(a) of the Internal Revenue Code. Such services covered a period longer than thirty-six (36) months; therefore, appellants in reporting the award of \$68,837.96 on their 1952 joint income tax return, properly allocated the same over a period during which the services were rendered, and they are entitled to the benefits of said Section 107(a).

3. Appellant husband who informed the Internal Revenue Service as to the alleged irregularities on the books of a taxpayer, was instructed by said Service to proceed with the gathering of detailed information as to such alleged irregularities and complied with the instructions. The period, which was expended by him in gathering such information as instructed, is includable in the period during which personal services were rendered by appellant husband to the Internal Revenue Service in accordance with Section 107(a) of the Internal Revenue Code of 1939.

4. Appellant husband, having supplied to the Internal Revenue Service the information gathered by him concerning the alleged irregularities on the part of a certain taxpayer, was instructed by said Service to continue to supply to its explanations and clarifications of the information supplied, which appellant husband did. The period of time during which appellant husband was ready, willing and did supply such clarification and explanation to the In-

ternal Revenue Service is considered part of the period under Section 107(a), during which personal services were rendered.

5. The holding of the Tax Court that "an informer's award received by appellant husband of \$68,837.96 did not qualify for treatment under Section 107(a), Internal Revenue Code of 1939, since services leading to award did not extend over a 36-month period" is erroneous because it is contrary to the fact.

6. The holding of the Tax Court that "an informer's award received by appellant husband of \$68,837.96 did not qualify for treatment under Section 107(a), Internal Revenue Code of 1939, since services leading to award did not extend over a 36-month period" is erroneous because it is contrary to law.

7. The holding of the Tax Court that "an informer's award received by appellant husband of \$68,837.96 did not qualify for treatment under Section 107(a), Internal Revenue Code of 1939, since services leading to award did not extend over a 36-month period" is erroneous because it is contrary to law and the facts.

8. The Tax Court's order and decision of December 12, 1957, "that there is a deficiency in income tax of \$18,350.23 for the taxable year 1952," as far as these appellants are concerned, is erroneous because it is contrary to the facts.

9. The Tax Court's order and decision of December 12, 1957, "that there is a deficiency in income tax of \$18,350.23 for the taxable year 1952," as far as these appellants are concerned, is erroneous because it is contrary to law.

10. The Tax Court's order and decision of December 12, 1957, "that there is a deficiency in income tax of \$18,350.23 for the taxable year 1952," as far as these appellants are concerned, is erroneous because it is contrary to the facts and the law.

Dated, Carmel, California, April 24, 1958.

Respectfully submitted,

HEISLER & STEWART,

By /s/ FRANCIS HEISLER,
Attorneys for Appellants.

[Endorsed]: Filed April 25, 1958, U.S.C.A.

